

THE UNIVERSAL
Parish Officer.

CONTAINING

All the LAWS now in Force, relating to
PARISH BUSINESS, rang'd in
Alphabetical Order.

Very proper for Attornies, Constables, Churchwardens, Justices, Overseers of the Poor, Surveyors of the Highways, and all Persons in Office, who would gain a competent Knowledge of this Branch of the Law, so'as to enable them to discharge their respective Duties with Ease and Expedition.

It is also very proper for every House-keeper and Inhabitant who is desirous of being perfectly acquainted with the Laws relating to Parishes, that he may not entirely rely upon the Skill of Parish Officers, who are but too frequently unacquainted with some material Part of their Duty. This Work is entirely freed from the Errors, Obscurities, and Repetitions of former Writers on this Subject.

Collected from the Common, Statute, and other
authentic Law-Books.

Interspersed with many useful PRECEDENTS.

To which is added,

A compleat INDEX to the Whole.

By a GENTLEMAN of the *Middle-Temple*.

In the SAVOY:

Printed by Catherine Lintot, Law-Printer to the King's Most Excellent Majesty, for J. Coote, at the King's Arms in *Pater-noster Row*, 1759.

1568/1584.

B L

P R E F A C E.

IT may perhaps, on the first view, be thought superfluous to publish a treatise on Parish Law, when there are so many books already on that subject. But with submission to the Candid and Impartial, none seems so well calculated for the pocket, and at the same time so copious, extensive, and universal, as this now offered to the public: The others are too large to be portable, and adapted more for a library than suited to a common useful convenience. In this volume are contained the most frequent occurrences relative to parish business, and the most material extracts from books of the highest authority. The utility of the following sheets, it is presumed, will be highly beneficial to all attornies and their clerks, churchwardens, constables, overseers, surveyors, and in fine to every housekeeper and inhabitant who is desirous of know-

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ing the laws appertaining to parishes. All persons in office may now by consulting this book be properly qualified to discharge their trust without any other assistance, and that with the greatest ease and expedition, the whole being carefully ranged in due alphabetical order. It is hoped likewise that it will be in a great measure serviceable to country justices, notwithstanding the many elaborate treatises already published. The design was to make it rather useful than learned, universal than voluminous; and the author flatters himself that it contains all the information requisite for every parish-officer.

The UNIVERSAL Parish Officer.

Apprentices.

Concerning the settlement of apprentices,
See title (P002.)

- I. Who may take apprentices.
- II. Who are compellable to be bound apprentices.
- III. Binding.
- IV. Binding of poor apprentices.
- V. Binding poor apprentices to the sea service.
- VI. Differences between the master and apprentice.
- VII. Apprentice stealing his master's goods.
- VIII. Assigning apprentices.
- IX. Master dying.
- X. Apprentices setting up their trades.

I. Who may take apprentices.

1. **E**VERY householder, having and using In husbandry half a plough land in tillage, may take dry.
any apprentice above the age of 10 years
and under 18 to serve in husbandry till 21 at the
least, or till 24, as the parties can agree. 5 Eliz.
c. 4. sect. 25.

2. Every householder 24 years of age at the In trades in
least, residing in any city or town corporate and towns cor-
using porate.

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using any art, mystery, or manual occupation there, may retain the son of any freeman, not occupying husbandry, nor being a labourer, and inhabiting in the same, or in any other city or town corporate, to serve as an apprentice, after the custom of *London*, for seven years at the least, so as such apprenticeship do not expire before the apprentice shall arrive at the age of 24 years.
5 *Eliz. c. 4. s. 26.*

But no person dwelling in any city or town corporate being a merchant, mercer, draper, goldsmith, ironmonger, embroiderer or clothier, shall take any apprentice except he be his son, or else that the father and mother of such apprentice shall have an estate of inheritance or freehold of 40*s.* a year, to be certified under the hands and seals of three justices where the lands lie, to the mayor of that city or town corporate, and to be inroll'd among the records there. *Same statute, sect. 27.*

And the reason of this seems to be, for that such as are to be bound apprentices in towns corporate, if their parents be in good circumstances, then their masters shall be not only better secured, but such apprentices also in all probability shall be the more enabled to set up their trades after the expiration of their time. And concerning such whose parents have not 40*s.* a year, it is more meet for them to be bound apprentices to husbandry, and the like, in the country. *Dalt. r. 58.*

But by reason of the great alteration in the value of money since that time, this provision is become of little use, for an estate of 40*s.* a year then, was equal to more than 10*l.* a year now.

But the citizens of *London* and *Norwich* may take apprentices as before this act. *s. 40.*

3. Every person being an householder and 24 years of age at the least, and not occupying husbandry

Trades in
market
towns not
corporate.

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bandry, not being a labourer dwelling in any market town not corporate, and using any art, or manual occupation, may take as an apprentice the child of any other artificer not occupying husbandry, nor being a labourer inhabiting in the same or any other such market town in the same shire. *5 Eliz. c. 4. f. 28.*

But no person residing in any such market town being a merchant, mercer, draper, goldsmith, ironmonger, embroiderer, or clothier, shall take any apprentice except his son, or unless his parents have a freehold of 40 s. a year to be certified under the hands and seals of three justices of the shire where the lands lie, to the head officer of such market town where such apprentice shall be taken, there to be inroll'd of record. *f. 29.*

4. A smith, wheel-wright, plough-wright, mill-wright, carpenter, rough mason, plaisterer, sawyer, lime-burner, brickmaker, bricklayer, tyler, slater, helier, tyle-maker, linen-weaver, turner, cooper, miller, earthen-potter, woollen-weaver weaving household cloth only, fuller, burner of oare and wood ashes, thatcher, wheresoever he shall dwell, may take the son of any person as apprentice albeit his parents have no land. *5 Eliz. c. 4. f. 30.*

5. Every person, that shall have three apprentices in any the crafts of a clothmaker, fuller, sheerman, weaver, taylor, or shoemaker, shall keep one journeyman, and for every other apprentice above three one other journeyman, on pain of 10 l. half to the king, and half to him that shall sue in the sessions or other court of record; or if it is a town corporate, then to be applied as by the charter. *5 Eliz. c. 4. f. 33.*

No hat-maker shall have above two apprentices at one time, nor serve for a less term than seven years, on penalty of 5 l. a month half to the king,

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and half to him that shall sue in any court of record: but this not to extend to his own son in his own house, so as he be bound by indenture for seven years, and his term not to expire before his age of 22 years. 1st J. c. 17. s. 3, 5.

Weavers of stuffs in *Norfolk* and *Norwich*, that shall employ two apprentices, shall also employ two journeymen; and no master shall have above two apprentices, or any week boy, to weave in the said trade, on pain of 5^l. a month to the king. 13 & 14 C. 2. c. 5. s. 18.

II. Who shall be compellable to be bound apprentices.

Who shall
be bound.

1. If any person shall be required by a householder using half a plough-land at least in tillage, to be an apprentice and to serve in husbandry, or in any other art or science before mentioned, and shall refuse so to do, then on complaint to one justice or head officer, he shall send for the person refusing and commit him to ward till he gives his consent to be bound, provided the justice shall think him a proper person to serve. 5 *Eliz.* c. 4. s. 35.

At what
age.

2. But no person shall be bound to enter into any apprenticeship, other than such as be under the age of 21 years. 5 *Eliz.* c. 4. s. 36.

III. Binding.

Binding to
be by deed,
and indent-
ed.

1. One cannot be bound an apprentice without deed. 1 *Salk.* 68.

2. And by the 5 *Eliz.* c. 4. it must be by deed indented. s. 25.

M. 1 G. 2. *Smith* and *Birch*. An action was brought against *Birch* for enticing away and detaining *Smith's* apprentice, who had agreed by writing to serve *Smith* for seven years. Upon evidence

evidence it appeared that the stile of the writing began *This indenture*, but in truth the parchment was not indented. On exception made to the deed, it was insisted the young man was not an apprentice, because not bound by indenture. An infant can be bound no other way than as the Stat. of 5 *Eliz.* directs, which is by indenture, and nothing can make this good. The deed can't be indented now, for that would be a forgery. Therefore unless *Smith* proves the apprentice to be of full age at the time of signing such writing, he cannot be deem'd his apprentice, and consequently no action can lie for detaining the apprentice; neither can *Smith* prove him to be his servant by this deed, for he has declared for an apprentice, and must prove him so to be. Therefore *Smith* was nonsuited. *Seff. Ca. V. 1. 222.*

3. And an apprentice must be retain'd by the name of an apprentice expressly, otherwise he is no apprentice tho' he be bound. *Dalt. c. 58.* And by the name of an apprentice.

4. And all indentures and covenants for taking apprentices, otherwise than agreeable to the statute of 5 *Eliz.* shall be manifestly void in law; and every person taking an apprentice contrary to the directions of the said act shall forfeit 10*l.* half to the king, and half to him that shall sue in the sessions or other court of record; or if 'tis in a town corporate, then to the use of such town as by the charter. 5 *Eliz. c. 4. f. 41.* Binding otherwise, void.

5. By a late act enforcing an additional duty, the binding (except it be of parish apprentices) shall be on a double half-crown stamp'd paper or parchment, and the same shall not be given in evidence in any court 'till it be stamp'd, and the duties paid. Stamp.

6. And by the 8 *An. c. 9.* Besides the said stamps and duties, there shall be paid the duty of 6*d.* in the pound for every sum of 50*l.* or under, and 1*s.* in the pound for every sum above

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50*l.* given with any apprentice; and proportionably for greater or lesser sums; to be paid by the master. *f.* 32.

And where any thing, not being cash, shall be given with such apprentice, the duties shall be paid according to the value of the thing given.

f. 44.

But this extends not to any apprentice put out by charity. *f.* 40.

And the full sum shall be inserted in the indenture in words at length, and shall bear date on the day of the execution thereof, on pain that the master shall forfeit double, half to the king, and half with full costs to him that shall sue. *f.* 35.

Indentures *within the bills of mortality* shall be stamp'd, and the duties paid within one month after date. *f.* 36.

And elsewhere in two months after date. *f.* 37.

And if within 50 miles of the limits of the bills of mortality, the indenture shall within three months after date, and elsewhere within six months, be brought to the head office to be stamped. *f.* 38.

And all indentures wherein the full sum given shall not be inserted, or whereon the duties shall be omitted to be paid, or which shall not be stamped within the time limited, shall be void. *f.* 39.

Moreover by 9 *Ann. c.* 21. The master neglecting to pay the duties in time forfeits 50*l.* half to the king, and half to the person suing with full costs. *f.* 66.

And by the 18 *G. 2. c.* 22. If the master neglects to pay the same as aforesaid, he shall, besides all other penalties, forfeit double duty. *f.* 23, 24.

But by 27 *G. 2. c.* 16. For relief of persons who have neglected the payment of said duties, on payment thereof on or before *August* 1. 1754. and tending the said indentures to be stamped on
or

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or before Sep. 29. 1754. of which timely notice shall be given in the Gazette, they shall be good.

And there is the like clause of indemnity in some act every two or three years.

And by the 20 G. 2. c. 45. If any master, having incurr'd the double duty, shall pay the same and tender the indenture to be stamp'd, within two years after the determination of the apprenticeship, and before suit hath been commenced for the penalties, the indenture shall be good and penalties discharged.

And if after the master shall have forfeited the double duty, the apprentice shall in presence of one witness require his master to pay the same, and he shall not do it in three months, and such apprentice shall within two years after his apprenticeship pay the double duty, he may within three months after such payment demand of his master double the sum contracted for in the indenture, and if not paid in three months after, may recover the same by action at law with full costs. And the apprentice instantly after payment of the said double duty (if his apprenticeship shall not be then expired) signifying by writing under his hand that he desires to be discharged, he shall be discharged accordingly, and have the same benefit of the time he hath served, as he would have had in case he had been assigned or turned over to a new master. *s. 6, 7.*

And where any prosecution shall be commenced against the master for the penalties, if the apprentice shall pay the double duty at any time in two years after the end of his apprenticeship, he may thereupon exercise his trade, and the indenture shall be good. *s. 8.*

Note; An indenture, or other deed, is good, tho' executed on a blank piece of parchment or paper without any stamp, but then it cannot

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not be given in evidence till it be stamped and the penalty paid, which is 5*l*.

And so it hath been adjudged in a case recorded in first volume of *Strange's Reports*, page 624. *Easter term 11 Geo. 2.* when the whole court were of this opinion, saying, that the act never intended to avoid deeds that were not stamped, but only to add a penalty to enforce the duty.

IV. Binding of poor apprentices.

Power to bind.

1. The churchwardens and overseers by the assent of two justices (one whereof must be of the *quorum*) may bind any such children, whose parents are not able to support them, to be apprentices, till such children, if male, shall arrive to the age of 24 years, if female, to the age of 21, or marriage. 43 *Elix. c. 2. s. 5.*

Power to take.

2. And all persons may take such children bound as above as their apprentices. 21 *Jac. c. 28.* 3 *Car. c. 4. s. 22.*

Indenture to be stamped.

3. By the several stamp acts, the indenture must be on a fixpeny stamped piece of paper or parchment, but is exempted from the additional stamps and duties for money given with the apprentice.

V. Binding poor apprentices to the sea service.

Who may be bound.

1. Two justices and the head officer in corporation, and the churchwardens and overseers of the several parishes or townships, with the consent of such justices or head officer, may bind any boy 10 years old, or upwards, or who shall be chargeable, or whose parents shall be chargeable, or who shall beg for alms, to be apprentice to the sea service

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vice to any subject being master of a ship or vessel, until he shall come to the age of 21 years. 2 & 3 Ann. c. 6. s. 1.

2. And the churchwardens and overseers shall pay down to the master, at the time of the binding, the sum of 5 l. for cloathing and bedding; and the charges by this act appointed shall be allowed on their accounts. 2 & 3 Ann. c. 6. s. 2. What money shall be given.

3. The churchwardens and overseers shall send the indenture to the collector of the customs at the port whereto the master belongs, who shall register the indenture and attest it by an indorsement thereon, without fee, on pain of forfeiting 5 l. to the poor of the parish from whence such boy was bound. 2 & 3 Ann. c. 6. s. 5. Indenture to be registred.

4. The counterpart of the indenture shall be executed by the master, attested by the collector of the port, and the officer who carries the apprentice. *Same statute, c. 6. s. 11.* Counterpart to be then executed.

5. Two justices near the port, and mayors of towns corporate, in or near to such port to which such ship shall at any time arrive, may determine all complaints of ill usage from the master to such apprentice. 2 & 3 Ann. c. 6. s. 12. Differences between masters and apprentices.

6. If the master shall die during the term, his widow, or his executor or administrator, may assign over such apprentice to any other master. 4 Ann. c. 19. s. 16. Master dying.

VI. Differences between the master and apprentice.

1. The master is allowed by law with moderation to chastise his apprentice. *Dalt. c. 58.* Master may chastise his apprentice.

2. An apprentice cannot be discharged but by writing; but the master and apprentice may leave each other by agreement between themselves; and if so, then the master may give under his hand permission for the apprentice's departure, and then Whether the master himself can discharge his apprentice.

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one justice out of sessions may discharge him, allowing the cause of his departure. *Dalt. c. 58.*

But this extends not to parish apprentices, for there the overseers are parties to the contract, which cannot be avoided by any private agreement between the master and his apprentice.

Differences.

But if the master and his apprentice cannot agree, they may proceed in one of these two ways; either upon the statute of 5 *Eliz. c. 4.* or upon the statute of 20 *Geo. 2. c. 19.* And first by the statute of 5 *Eliz. c. 4.* it is enacted, that if any master shall misuse his apprentice, or the said apprentice shall have just cause to complain, or the apprentice do not his duty, then the said master or apprentice so grieved shall repair unto one justice of the county, or to the mayor or other head officer of the city, town corporate, or market town, or other place where the master lives, who shall judge and act according to the equity of the case. And if for want of conformity in the master, the said justice or head officer cannot settle the matter, he shall take bond of the said master to appear at the next sessions; and on his appearance and hearing of the matter there, if it be thought meet to discharge the said apprentice, then the justices, or four of them at the least (one whereof to be of the *quorum*) or the said mayor, or other head officer, with the consent of three other of his brethren, or men of best reputation in such city, town corporate, or market town, shall have power in writing under their hands and seals to declare, that they have discharged the said apprentice, and the cause thereof; and the said writing being inrolled by the clerk of the peace, or town clerk, amongst the records, shall be a sufficient discharge for the apprentice against his master, his executors and administrators. And if the default shall be found to be in the apprentice, then the said justice,

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or the said mayor, or other head officer, with the assistance aforesaid, shall cause such due correction to be administred to him, as by their discretion shall be thought meet. *f. 35.*

And secondly, by the 20 Geo. 2. c. 19. on complaint unto two justices by any parish apprentice, upon whose binding out no larger a sum than 5 *l.* was paid, concerning any misusage, they may summon the master or mistress to appear before them at a reasonable time to be named in such summons; and on proof upon oath of the truth of the said complaint (whether the master or mistress be present or not, if service of the summons be also proved upon oath) the said justices may discharge the apprentice by warrant or certificate under their hands and seals, for which warrant or certificate no fee shall be paid. *f. 3.*

And such justices, on complaint on oath by any master or mistress against any such apprentice concerning any misdemeanor, may determine the same, and punish the offender by commitment to the house of correction, there to remain and be corrected, and held to hard labour for a reasonable time not exceeding one calendar month, or otherwise by discharging such apprentice. *f. 4.*

VII. Apprentice stealing his master's goods.

By the 21 H. 8. c. 7. servants going away with their master's goods with intent to steal them, shall be guilty of felony, but not to extend to apprentices.

And by 12 Ann. *f. 1. c. 7.* Person stealing to the value of 40 *s.* being in a dwelling house or outhouse, though such house be not broken, and though no person be therein, shall be guilty of felony without benefit of clergy: but this not to extend to apprentices under 15 years of age.

But

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But if they be 15 years of age, they shall be guilty as other persons.

VIII. Assigning apprentices.

The master assigning, and the apprentice consenting, will not make him an apprentice to the assignee within the 5th of *Eliz.* but by the custom of *London* he may be turned over to another. *Dalt.* c. 58.

And an assignment to the sea service is good by act of parliament, as is before mentioned.

H. 3 Geo. Barnes's case, order returned on a *Certiorari*: it is resolved by the justices at the sessions, that where a person was bound an apprentice to *Barnes* by the parish officers, and that *Barnes* had assigned him to another, that the assignment is void, and direct *Barnes* to take his apprentice again. *Chief Justice*: why may not the first master assign him? this is but a performance of the covenant to instruct him; and if he assign him to one who does instruct him, they cannot make such an order as this; they may correct him if he do not provide for his apprentice, or instruct him, but the justices are not concerned in the manner of doing it. *Quashed. Foley* 155.

For the power of the justices goes no farther than to oblige the master to provide for his apprentice; but in what manner he does it, whether in his own house or otherwise, is nothing to them. But if the assignee of the apprentice doth not provide for him, the first master may be compelled to do it, and he may take his remedy over. *Sess. Ca. vol. 1. 110.*

IX. Master dying.

If the master dies, the apprentice goes to the executor or administrator to be maintained if there are

are assets; but the executor or administrator may bind him to another master for the remaining part of his time. *Danv. Abr.*

X. Apprentices setting up their Trades.

The restraining clause in the statute of 5 *Eliz. c. 4.* is as follows: It shall not be lawful for any person to set up, occupy, use or exercise, any craft, mystery, or occupation, now used or occupied within the realm of *England* or *Wales*, except he shall have been brought up therein seven years at the least as an apprentice, by the statute, nor to set any person on work therein, except he shall have been an apprentice as aforesaid, or else having served as an apprentice will become a journeyman or hired by the year, on pain of 40*s.* a month, half to the king, and half to him that shall sue in the sessions or other court of record; or if it is in a town corporate, then to be disposed of as other fines by the charter. *f. 31.*

Assault and Battery.

- I. *Assault what.*
- II. *Battery what.*
- III. *In what cases they may be justified.*
- IV. *How punished.*

I. *Assault what.*

ASSAULT, is an attempt or offer, with force and violence to do a corporal hurt to another.

Notwith-

Assault and Battery.

Notwithstanding the many ancient opinions to the contrary, it seems agreed at this day, that no words whatsoever can amount to an assault. 1 *Haw.* 134.

II. Battery what.

Battery is when an injury, be it never so small, is actually done to the person of a man; as by spitting in his face or violently jussling him out of the way, treading on his toes in an insolent manner, or the like. 1 *Haw.* 134.

III. In what cases they may be justified.

A person may justify an assault in defence of his person or of his wife, or master, or parent, or child within age; and even a wounding may be justified in defence of his person, but not of his possessions. 3 *Salk.* 46.

Also if a person comes into my house and will not go out, I may justify laying hold of him and turning him out.

Also if one confine a friend who is mad, and beat him in such a manner as is proper in his situation; or if a man force a sword from one who attempts to kill another therewith; in these cases, and such like, it is justifiable. 1 *Haw.* 130.

If one is carrying away my goods, I may beat him to prevent him from carrying them away. This is no unlawful beating. *Wood's Inst.* Page 545.

IV. How punished.

There is no doubt but that the wrong doer is subject both to an action at the suit of the party, wherein he shall render damages; and also to an indictment, at the suit of the king wherein he shall

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shall be fined according to the heinousness of his offence. 1 *Harw.* 134.

And by 6 *Geo. c.* 23. *f.* 11. Assaulting in the street or highway with intent to spoil peoples cloaths, and so spoiling them, is felony and transportation.

Warrant for an assault.

Berks. { To the constable of

WHEREAS complaint hath been made before me *L. P.* esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of *A. B.* of _____ in the said county, weaver, that *C. D.* of _____ aforesaid, taylor, did on the _____ day of _____ violently assault and beat him the said *A. B.* at _____ aforesaid, in the county aforesaid: These are therefore in his said majesty's name to command you forthwith to apprehend the said *C. D.* and to bring him before me to answer unto the said complaint, and to be further dealt withal according to law. Given under my hand and seal the _____ day of _____ &c.

Indictment for an assault.

THE jurors for our sovereign lord the king on their oath present, that *C. D.* of _____ in the said county, taylor, on the _____ day of _____ in the _____ year of the reign of _____ at _____ aforesaid, in the county aforesaid, in and upon *A. B.* weaver, then and there being in the peace of God and of our said lord the king, with force and arms an assault did make, and him the said *A. B.* then and there did beat, wound and evilly treat, and then and there to him other injuries

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injuries did, to the great damage of him the said *A. B.* and to the bad example of all other offenders in the like kind, and against the peace of our said lord the king, his crown and dignity.

Bastards.

Concerning the settlement of bastard children. See title *1002*.

The woman's examination before the child's birth.

Middlesex, ss. **T**H E examination of *Mary Hutchins* single woman, taken before me ——— esquire, one of his majesty's justices of the peace for the said county, this first day of *January* in the year of our lord 1759, who on her oath says, that she is an hired servant to *T. G.* of, &c. shoemaker, at the yearly wages of 5 *l.* and has continued in her said service from the ——— day of ——— And further saith, that in the month of ——— last as she this examinant was sitting by the fire in her master's parlour (all the family being gone out) one *W. W.* mercer, living in ——— came and inquired for the master of this examinant, and upon this examinant's telling him he together with all the family were gone out, the said *W. W.* promising great kindness and making many protestations, prevailed with her this examinant, and then and there had carnal knowledge of her body, and has had the same five several times since; and that the said *W. W.* did get her with child of the child or children which she now is pregnant of, which said child, or children, when born is and are likely to be a bastard

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bastard or bastards, and to become chargeable to the parish of T. and this examinant further saith, that he the said W. W. and no other person, is the father of the said child or children.

Mary Hutchins.

Sworn the day and year above-mentioned before me

The justices of peace, after having taken the examination, must then issue their warrant, for taking the person so charged, to the constable. After the examination the justice is to make out a warrant.

The warrant against the reputed father of a bastard child before it is born.

To the constable, headborough, &c.

Middlesex, ss. **W**HEREAS on the voluntary examination of *Mary Hutchins*, &c. single woman, taken this day before me on oath, it appears that she is now pregnant with a bastard child or children, which when born is or are likely to become chargeable to the parish of T. and whereas at the examination of the said *Mary Hutchins* on oath before me, she the said *Mary Hutchins* did charge *W. W.* of, &c. mercer, to have begotten the same: These are therefore in his majesty's name to command you, or some or one of you, to apprehend the said *W. W.* and bring him before me or some other of his majesty's justices of the peace of the said county, to be examined touching the premises, and to be further dealt with according to law. Given under my hand and seal, &c.

Note; This warrant before the birth is given by statute 6 Geo. 2. c. 31. but the woman is

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is not compellable to be examined 'till a month after delivery.

A warrant against the father of a bastard child after it is born.

Middlesex, ss. **W**HEREAS upon the examination of M. H. single woman, taken in writing, upon oath before me one of his majesty's justices of the peace for the said county, it appeareth that the said M. H. hath lately been delivered of a bastard child, and that she doth charge W. W. of ——— with having gotten the same, which child is chargeable (or likely to become chargeable, as the case is) to the parish of ———

These are therefore, upon the complaint of the overseers of the poor of the said parish of ——— to require you to bring the said W. W. before me or some other of his majesty's justices of the peace, to be examined and dealt with according to law. Given, &c.

A commitment of the father of a bastard child.

To the keeper of the gaol for the county of, &c.

Middlesex, ss. **W**HEREAS upon examination of M. H. single woman, taken in writing, upon oath before me one of his majesty's justices of the peace for the said county, it appeareth that the said M. H. hath lately been delivered of a bastard child and that she doth charge W. W. of ——— with having gotten her with child, which child is chargeable (or likely to become chargeable, as the case is) to the parish of ———

And whereas the said W. W. doth refuse to give security to indemnify the said

said parish of ——— or to enter into a recognizance with sufficient surety to appear at the next general sessions of the peace to be holden for the said county, and to abide by and perform such order as shall be made in pursuance of the statutes in such case made and provided: These are therefore to require you to receive the said *W. W.* into your custody, and him safely keep, until discharged by due course of law. Given, &c.

The party may, if he pleases, come before the justice, and by recognizance be bound with sureties for his appearance, and then a *superseamus* shall be sent to the above warrant. When the person is before the justice, he must enter into a recognizance with sufficient sureties for his appearance at the next sessions, when he may be continued upon the recognizance 'till the woman is delivered of the child, and if he refuses to enter into such recognizance, he may be committed. The condition of the recognizance may be either for the reputed father's appearance at the next sessions, or at the next sessions after the child shall be born, or he may give bond to indemnify the parish.

Recognizance for bastardy where two are bail for the man in custody.

Middlesex, **B**E it remember'd that on the first to wit. **B** day of *May* in the 31st year of the reign, &c. and in the year of our lord 1758, *R. M.* of *L.* in the said county, victualler, and *M. E.* of *L.* aforesaid gent. came before me *S. J.* one of his majesty's justices of the peace for the said county, and took in hand, and each of them took in hand, for *T. N.* of the parish of ——— in the county aforesaid, taylor, under the penalty of 20*l.* of lawful money of *Great Britain*, which said sums they and each of them acknowledged to
owe

Bastards.

owe to the said lord the king, and granted to be made and levied of their goods and chattels, lands and tenements, to the use and behoof of the said lord the king, his heirs and successors, if the aforesaid *T. N.* shall make default in the condition underwritten.

The condition of a recognizance of one charged to be the father of a bastard before its birth, to appear at the sessions.

Middlesex, ss. **T**HE condition of this recognizance is such, that if *T. N.* aforesaid do personally appear at the next general quarter-sessions of the peace to be holden for the said county of *Middlesex*, then and there to abide and perform such order as shall be made upon the complaint of the overseers of the poor of the parish of ——— for getting *T. S.* single woman with child, which child is likely to be born a bastard, and to be chargeable to the said parish of ——— (or as the case is) for begetting a bastard born in the said parish on the body of *T. S.* single woman, which bastard child is become chargeable to the said parish, that then this recognizance shall be void, or else remain in full force

Taken and acknowledged the ———
day of ——— before me *J. S.*

The party accused may give a bond to indemnify the parish. If the reputed father should refuse to give sureties for his appearance, or bond to indemnify the parish, then he is to be committed.

Form

Form of a condition to discharge the parish of a bastard child, given to the churchwardens and overseers of the poor.

WHEREAS *F. M.* of, &c. in the county of *C.* spinster before one of his majesty's justices of the peace for the said county of *C.* hath sworn that she is great with child, and that the above bounden *R. R.* is the father of such child or children she now goeth with: Now the condition of this obligation is such, that if the above bounden *R. R.* and the said *E. F.* and *G. H.* or either or any of them, their or either or any of their heirs, executors or administrators, do and shall, from time to time and at all times hereafter, fully and clearly acquit, exonerate and discharge, or otherwise well and sufficiently save, keep harmless and indemnify as well the above named *W. D.* and *J. S.* churchwardens and overseers of the poor of the parish of *L.* aforesaid, and their successors for the time being, and every of them, as also all the inhabitants and parishioners of the said parish of *L.* which now are or hereafter shall be, for the time being, and every of them, of and from all and all manner of expences, damages, costs and charges, which shall or may at any time hereafter arise, happen, grow, or be imposed upon them or any or either of them, by means of the said *F. M.*'s being now great with child, as aforesaid, or for or by reason or means of the birth, maintenance and education of such child or children that the said *F. M.* goeth with, and shall be delivered of, and of and from all actions, suits, troubles, charges, damages and demands whatsoever touching and concerning the same,

Beadle.

same, then this obligation to be void, otherwise to remain in full force.

If after security given, the child become chargeable, the justices of the peace or the sessions may not intermeddle, but the parish are to have their remedy by suing the sureties on their bond.
2 *Saund. Rep.* 80.

Capacity of a bastard child as to inheritance.

A bastard can have no name of reputation as soon as he is born; but after he is born and hath gained by time a name by reputation, he may purchase by his reputed name to him and to his heirs, though he can have no heirs but of his body. 1 *Inst.* 3. 6. *Co.* 65.

Of the beadle of a parish.

His office
and duty.

A beadle of a parish is one who is chosen by the vestry: his business is to attend it, and to give notice to the parishioners when and where it is to meet, to execute its orders, to assist the constable in taking up beggars, passing vagrants, &c. and to that end, where they are to be passed to a great distance, he is sometimes inserted among the overseers of the poor, &c. and generally to do and execute all the orders and business of the vestry and of the parish, as their messenger or servant.

Churchwardens.

Churchwardens.

- I. Who are exempted from being churchwardens.*
- II. Chusing and swearing of churchwardens, with their duty thereupon.*
- III. Their duty in levying rates; and therein of vestries and select vestries.*
- IV. Their duty as to repairs; and therein concerning church rates.*
- V. Their duty as to sundry other matters.*
- VI. Their accounting.*
- VII. Their punishment on misbehaviour.*
- VIII. Their indemnity on doing their duty.*
- IX. Of briefs and their management.*

I. Who are exempted from being churchwardens.

A Counsellor or attorney ought not to be chosen churchwarden; and if he is, he may have a prohibition by reason of his attendance on the courts at *Westminster*. 2 *Roll's Abr.* 272.

Apothecaries who have served seven years, dissenting teachers or preachers, are exempted from this office. And all persons who have convicted a felon shall not be chosen churchwardens in the parish where the offence was committed.

II. Chusing and swearing churchwardens, with their duty thereupon.

1. Churchwardens shall be chosen yearly in *Easter* week, by the joint consent of the minister and parishioners, if it may be; but if they cannot agree, the minister shall chuse one, and the parishioners another. *Can.* 89.

When to be
chosen and
by whom.

2. A

Churchwardens.

Refusing to
take the of-
fice.

2. A person chosen churchwarden, on his refusal to take his office and oath, may be excommunicated. *Cod. 243.*

3. The churchwarden's oath, as said to have been agreed on upon mutual consultation between the civilians and common lawyers, is as follows :

The oath.

" You shall swear truly and faithfully to execute the office of a churchwarden within your parish, and according to the best of your skill and knowledge present such things and persons, as to your knowledge are presentable by the laws ecclesiastical of this realm.

So help you God.

4. Churchwardens being thus sworn may sue for the goods of the church, and also purchase goods for the use of the parish, and shall continue in their office till the new churchwardens be sworn.

III. *Their duty of levying rates, and therein of vestries and select vestries.*

Summoning
a vestry.

1. The rates must be made with the consent of the major part of the parishioners, housekeepers, or occupiers of land ; to which end publick notice of a vestry should be given the *Sunday* before, either in the church or at the church door ; and it should be then also declared for what business such meeting is to be held, that no one may be surprized, but that they may have time to consider of what is to be proposed at the said meeting ; and it is customary for the church bell to toll half an hour before it begin, to give the parishioners notice when they are met.

Who shall
have a vote
in the vestry.

2. At the common law, every parishioner who paid to the church rates, and no other, had a right

right to vote. *Par. L. 56.* And those that pay no church rates shall have no vote in affairs relating to it, except it be the rector or vicar. *Wood 155.*

3. The churchwardens and parishioners being assembled, it remains for them to consider what sum will be necessary to be raised for the needful repairs, and after they have agreed, they are to make an equal levy. *Laying the rates.*

4. And the major part of those who shall appear shall bind the parish; or if none appear, the churchwardens alone may make the rate. *Majority to bind the parish.*

5. Every parish act should be entered in the parish book of accounts, and signed by every one consenting thereto. *Par. L. 55. Entering in a book.*

6. It is held that a rate for the repairs of the fabrick of a church is real, charging the land, and not the person; but a rate for ornaments is personal, upon the goods and not upon the land. *Two rates. Cod. 220.*

7. A taxation by the pound rent is the fairest way, and not according to the quantity of land. *Equal pound rate. Wood 156.*

8. Where lands are in farm, not the landlord but the tenant shall be rated and pay. *Tenant to be charged. Cod. 221.*

9. If any person find himself hurt at the inequality of the assessments, his appeal must be to the ecclesiastical judge. *Appeal against the rates. Degge 172.*

10. If any Person, though a quaker, refuse to pay his rates, being demanded by the churchwardens, they may be sued for in the ecclesiastical courts. *Rate, how recovered.*

IV. Their duty as to repairs; and therein concerning church seats.

1. Of common right the soil and freehold of the church is the parson's; the use and body of the church, and the repair of it, common to the
C parishioners; *Who shall repair.*

Churchwardens.

parishioners; and the disposing of the seats therein, the right of the ordinary. *Cod. 221.*

Difference
between ad-
ding some-
thing new
and repairing
the old.

2. If the churchwardens add any thing new either to the fabrick of the church, utensils, or church yard, they must have the consent of the parishioners; and if such additions are in the church, the bishop's licence is also necessary: but where necessary repairs are wanting, the major part of the parish will bind the less; and if the major part will not consent where repairs are necessary, the churchwardens may repair without their consent, if upon notice given they refuse to meet and make a rate; but if a church fall down the parishioners are not bound to rebuild it. *Read. Ch. Serv. 1 Vent. 367.*

Majority
may rebuild.

3. But if a church be so much out of repair that it is necessary to pull it down, or so little that it needs to be enlarged, the major part of the parishioners may make a rate for new building or enlarging, as there shall be occasion.

Repairing
the Chancel.

4. The parson, that is, the spiritual rector, as also the lay impropiator, are bound by common right to repair the chancel, and is thereupon intitled to the chief seat therein, unless another hath it by prescription; yet he hath not the disposal of the seats therein but the bishop. *Cod. 223, 224.*

Repairing an
Isle.

5. An isle in a church which hath time out of mind belonged to a particular house, and been maintained and repaired by the owner of the house, is part of his frank tenement, and the ordinary cannot dispose of it, or intermeddle in it. *Cod. 221.*

Seat insepar-
able from
the tenure.

6. A seat, or priority in a seat in the body of a church, may be prescribed for as belonging to a house, if it hath been used and also repaired time out of mind by the inhabitants of such house. *Cod. 221.*

And no one can claim a seat in a church by prescription as belonging to land, but it must be laid

laid as belonging to a house in respect of the inhabitancy thereof. *Wood 153.*

And therefore a seat may not be granted to a person and his heirs absolutely, for the seat doth not belong to the person but to the inhabitant. *Cod. 221.*

V. Their duty as to sundry other matters.

1. Every churchwarden is an overseer of the poor, though every overseer of the poor is not a churchwarden. *43 Eliz. c. 2. s. 1.* Overseer,

2. They are to see that the churchways be well kept and repaired.

3. They (or the constable) shall levy the penalties for persons exercising their worldly calling on the lord's day. *29 Car. c. 7.* Worldly calling on lord's day.

They shall suffer no plays, feasts, banquets, suppers, church ales, drinkings, temporal courts or leets, lay juries, musters, or any profane usage to be kept in the church or churchyard. *Can. 88.* Profanation of church.

4. They shall see that the parishioners resort to church and continue there orderly during divine service, and shall present the defaulters. *Can. 90.* Attending divine service.

5. They shall not suffer any idle persons to abide either in the churchyard or porch, during divine service, but shall cause them to come in or depart. *Can. 19.* Loitering in the churchyard.

6. They shall levy the forfeiture of 12 d. a Sunday on the goods of persons not coming to church. *1 El. c. 2.* Levying 12 d. a Sunday for not coming to church.

7. They (or the constable) shall levy the penalty of 3 s. 4 d. for using unlawful pastimes on the lord's day. *1 C. c. 1.* Sports on the lord's day.

8. They shall take care to have in the church a large bible, book of common prayer, book of Homilies, a font of stone, a decent communion table with proper coverings, the ten commandments, set up at the East end and other select sentences. Ornaments of the church.

Churchwardens.

tences upon the walls, a reading desk and pulpit, and chest for alms, all at the charge of the parish.

Can. 80, 81, 82, 83, 84.

Bells. 1

9. They ought to keep the keys of the bellfry, and to take care that the bells be not rung without good cause, to be allowed of by the minister and themselves. *Can.* 88.

Register.

10. They shall have a box wherein to keep the register with three locks and keys, two keys to be kept by them, and one by the minister; and every Sunday they shall see that the minister enter therein all christnings, weddings and burials, that have been the week before, and at the bottom of every page they shall with the minister subscribe their names; and they shall, within a month after *March* 25 yearly, transmit to the bishop a copy thereof for the year before, subscribed as above.

And such register is good evidence, and the falsifying it is punishable at common law. *Cod.* 220.

Communion.

11. They shall at the charge of the parish, with the advice and direction of the minister, provide bread and wine against the communion. *Can.* 20.

Charity briefs.

12. They shall collect money on charity briefs, on pain of 20 *l.* 4 *Ann. c.* 14.

Strange preachers.

13. They shall not suffer any strangers to preach but such as shall appear qualified, on shewing their licence. *Can.* 50, 52.

Burying in woollen.

14. They shall on certificate from the minister apply to the magistrates for conviction of offenders in not burying in woollen. 30 *Car.* 2. *c.* 3.

Imprisoning offenders.

15. They shall join with the constables and other inhabitants in making assessments for conveying offenders to the gaol or house of correction. 3 *J. c.* 10. 13 & 14 *C.* 2. *c.* 12.

Surveyors of the highways.

16. They shall join with the constable and surveyor of the highways in chusing and returning new surveyors. 3 *W. c.* 12.

VI, Their

VI. Their accounting.

1. At the end of the year they shall before the minister and parishioners (at a vestry) give up a just account of such money as they have received, and also what they have particularly bestowed in reparation, and otherwise, for the use of the church; and shall deliver up to the parishioners the money and parish goods in their hands, to be delivered over by them to the next churchwardens by bill indented. *Can. 89.* When to account.

2. And if they refuse, they may be presented at the next visitation by the new churchwardens; and if they have disbursed more than they have received, the succeeding churchwardens shall pay what is due to them, and account it among their disbursements. *1 Roll's Abr. 121.* How compelled to account.

3. It has been said, that for disbursements of any sum not above 40 s. their own oath is held sufficient proof, but for all sums above, receipts must be produced. *Barl. 105.* But it may be more satisfactory if receipts be produced for all. Vouchers.

4. When they have faithfully accounted, and their account is allowed by the minister and the major part of the parishioners present, it shall not afterwards be in the power of any to make them account again; unless some fraud in their account is afterwards discover'd. *Wood 157. Barl. 105.* Account allowed, final.

VII. Their punishment on misbehaviour.

1. If the churchwardens waste the goods of the church, the new churchwardens may call them to an account before the bishop, or bring their action at common law. *Read. Ch. Service.* Churchwardens committing waste.

Parishioners
may be evi-
dence against
them.

2. 3 *W. c. 11. f. 12.* It is enacted, that in all actions to be brought in any court at *Westminster*, or at the assizes, for the recovery of monies collected by churchwardens and overseers for the use of the poor, the evidence of the parishioners, other than such as receive alms, shall be taken and admitted.

Not answer-
able for in-
discretion.

3. But churchwardens are not answerable for indiscretion, but for deceit only, if they lay out more money than is needful. *Wood 154.*

VIII. Their indemnity on doing their duty.

Double
costs.

If an action be brought against any churchwardens, for any thing done by virtue of their office, they may plead the general issue, and give the special matter in evidence; and if a verdict is given for them, or the plaintiff shall be nonsuited or discontinued, they shall have double costs. 7 *J. c. 5. 21 J. c. 12.*

IX. Of briefs, and their management.

The statute of 4 & 5 *Ann.* enacts, that when copies or briefs are delivered to the wardens of churches and chapels, &c. immediately after receipt, they are to indorse the time of receiving, with their names thereon, and forthwith deliver them over to the ministers and curates, who shall likewise indorse the time of their receipt, and their names, in like manner as the churchwardens.

The ministers, curates and preachers, on some Sunday in two months after receipt thereof, are immediately before preaching openly to read such briefs in their respective places of meeting; and the churchwardens shall collect the money that shall be given there, or go from house to house, &c.

The

Churchwardens.

31

The sums collected, place and time, are to be indorsed in words at length, and signed by the minister, curate and churchwardens, and by the teacher, and two substantial persons of separate congregations: And the briefs indorsed, and money collected, shall be delivered to the persons undertaking the brief, under the penalty of 20 *l*. The undertakers not demanding the briefs and money in six months, are liable to the same penalty.

If the whole number of briefs be not return'd, the undertaker for every copy wanting shall forfeit 50 *l*. unless he make sufficient proof in chancery of the briefs being lost by inevitable accidents, and of the money collected thereupon. And a register is to be kept of all monies collected, inserting the occasion of the brief, and the time when collected, to which all persons may have a free resort.

The undertakers in two months after the receipts of the money, and notice to sufferers, are to account before a master in chancery, to be appointed before the lord chancellor.

All farming and purchasing such charity money is declared unlawful; and deeds of covenant and agreement concerning the same shall be void: And any person agreeing to purchase the benefit of such brief shall forfeit 500 *l*. for the benefit of the sufferers.

Form of a rate for repair of a church.

Kensington, **A** Rate or assessment of 6 *d*. in the pound made the ——— day of ——— in the year of our lord 1759, upon the inhabitants of the parish of *Kensington* aforesaid, towards defraying the necessary expences and disbursements that have been laid out and expended in and about the parish church and ornaments thereof,

Churchwardens.

thereof, and also the churchyard, by us whose names are here under written.

A. B. }
C. D. } Churchwardens.
E. F. }

G. H. }
I. K. } Overseers of the poor.

L. M. }
N. O. } Ec. Inhabitants or parishioners.
P. Q. }
R. S. }

	s. d.
T. U. for one messuage	12 6
W. X. for one tenement, Ec.	10 0
Y. Z. for his lands called, Ec.	9 6
R. B. for one tenement.	11 0

Note; After the rate or collecting book is made and sign'd as above, it is to be confirm'd by the ordinary.

More of the churchwardens duty may be seen under title (¶0007.)

Constables.

- I. *Who shall be a constable.*
- II. *How chosen and sworn.*
- III. *His power as a conservator of the peace.*
- IV. *His duty as a subordinate officer to justices of the peace.*
- V. *His indemnity and protection in his office.*
- VI. *Concerning the expences of his office.*
- VII. *Concerning his account and removal from his office.*

IT is to be observed, that the sundry names of high constables, or constables of lathes, rapes, wapentakes, hundreds and franchises, and the divers names also of petty constables, tythingmen, borsholders, boroughheads, headboroughs, chief pledges, and such other, if there be any, that bear office in towns, parishes, hamlets, tythings or boroughs, are all in effect but two, that is to say, constables and headboroughs.

Constables are of two sorts, constables of hundreds and franchises, and constables in towns and parishes within those hundreds or franchises; and in comparison of the one with the other, the first are called high constables, and the latter petty constables.

I. Who shall be a constable.

Apothecaries in *London*, and within seven miles thereof, being free of the company of apothecaries, and also those in the country who have served seven years apprenticeship, shall be exempted from the office of constable. 6 & 7 W. c. 4.

Also a sworn attorney, or other officer of the courts at *Westminster* being chosen into this office, may have a writ of privilege for his discharge by reason of his necessary attendance in those courts. 2 *Haw.* 63.

And upon the like reason practising barristers at law, and the servants of members of parliament, law, &c., have the same privilege. 2 *Haw.* 63.

Also it hath been resolved, that an alderman of *London* for the same reason is not compellable to be a constable. 2 *Haw.* 63.

By the 32 H: 8. c. 40. The president, commons and fellows of the faculty of physick in *London*, shall not be chosen constables.

Constables.

And by 10 & 11 W. c. 23. s. 2, 3. The prosecutor of a felon to conviction, or person to whom he shall assign the certificate thereof, shall be discharged from the office of constable.

II. How chosen and sworn.

Choosing
high constables.

The usual manner now is, that the high constables of hundreds be chosen either at the sessions, or by the greater number of the justices of the division, and likewise that they be sworn at sessions, or by warrant from the sessions; which course hath been often allowed and commended by the justices of assize. *Dalt. c. 28.*

And the reason thereof may be this; namely, that their office at present doth not so much consist in executing the office of high constable as such, as in executing the justices precepts, which they may do for the most part whether they be in deed high constables or not.

Petty constables appointed by justices of the peace.

The justices of the peace have ever since the institution of their office taken upon them as conservators of the peace, not only to swear the petty constables, which have been chosen at a torn or leet, but also to nominate and swear those who have not been chosen at any such court, on the neglect of the sheriffs or lords to hold their courts, or to take care that such officers are appointed in them. *2 Haw. 65.*

By 13 & 14 C. 2. c. 12. It is enacted, if a constable shall die, or go out of the parish, or continue above a year in his office, any two justices may make and swear a new one, until the lord shall hold a leet, or till the next sessions, who shall approve of the officer so made and sworn, or appoint another. *2 Haw. 65.*

Constable refusing to be sworn.

Constables lawfully chosen, if they shall refuse to be sworn, a justice of the peace may bind them over to the assizes or sessions. *Dalt. c. 28.*

But it seemeth that the sheriff or steward of the leet cannot lawfully commit them for such refusal, without more; but it is said, that if the party be present in court, he may be fined, and that if he be absent, and have a certain time and place appointed him by the sheriff or steward, for the taking of the oath before a justice of the peace, and have also express notice of such appointment, and be presented at the next court, he may be amerced: Also it seems, that in either case he may be indicted either at the assizes or sessions.
2 Haw. 64.

By the 1 G. 2. c. 13. High constables are to take the oaths of allegiance, supremacy and abjuration, and receive the sacrament as other persons who qualify for offices; but petty constables are exempted.
Oath of allegiance and supremacy.

III. His power as a conservator of the peace.

1. Every high and petty constable are by the common law conservators of the peace. *2 Haw. 33.* *Constable a conservator of the peace.*

2. And therefore if any man shall make an affray or assault upon another in the presence of the constable, or shall threaten to kill, beat, or hurt another, or shall be in a fury ready to break the peace, the constable may commit him to the stocks, or other safe custody for the present, and after may carry him before a justice, or to gaol, until he shall find surety for the peace, which surety the constable himself may also take by obligation, to be sealed and delivered to the king's use; and if the party will not find surety to the constable, he may imprison the party until he shall do it. *Dalt. c. 1.* *May commit for an affray in his presence.*

3. But he may not require surety of the peace, unless the offence be upon his own view, and not if absent. *But not when he is if absent.*

Constables.

if it be committed out of his sight; for he cannot take any man's oath that he is afraid of death, because he is not a judge of record; which is the reason that an obligation taken by him shall be in his own name, and not in the king's: And the same shall be certified at the sessions of the peace. *Cro. Eliz.* 375.

IV. His duty as a subordinate officer to justices of the peace.

Subordinate to justices of the peace. It hath been always held that the constable is the proper officer to a justice of the peace, and bound to execute his warrants; and therefore it hath been resolved, that where a statute authorizes a justice of the peace to convict a man of a crime, and to levy the penalty by warrant of distress, without saying to whom such warrant shall be directed, or by whom it shall be executed, the constable is the proper officer to serve such warrant, and indictable for disobeying it. *2 Haw.* 62.

V. His indemnity and protection in his office.

Double costs.

1. If an action is brought against a constable, for any thing done by virtue of his office; he, and also all others which in his aid, or by his command, shall do any thing concerning his office, may plead the general issue, and give the special matter in evidence, and if he recovers he shall have double costs. *7 J. c.* 5.

Proper county.

2. And such action shall be laid in the county where the fact was done, and not elsewhere. *21 J. c.* 12.

No action if he delivers a copy of the warrant.

3. Formerly the constable was bound to take notice of the jurisdiction of the justice; inso-much that if the justice issued a warrant in any matter

matter wherein he had no jurisdiction, the constable was punishable for the execution of it: But now by the statute of 24 G. 2. c. 44. It is enacted;

That no action shall be brought against any constable, or other person acting by his order, and in his aid, for any thing done in obedience to the warrant of a justice of the peace, until demand hath been made, or left at the usual place of his abode, by the party, or by his attorney, in writing signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demand: And if after compliance therewith, any such action shall be brought without making the justice who signed such warrant defendant, or producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. And if such action be brought jointly against the justice and constable, on proof of such warrant the jury shall find for the constable, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such manner by the proper officer, as to include such costs as the plaintiff is liable to pay to such defendant for whom such verdict shall be found as aforesaid.
f. 6.

Note; By this it seems that the constable ought not to return the warrant to the justice, but to keep it for his own justification; for he cannot give the party a perusal of the warrant unless he hath it: But he must certify to the justice what he hath done in the execution thereof.

No action shall be brought against any constable but within six months after the act committed.
24 G. 2. c. 44. f. 8.

No action
after six
months.

And

Constable
assaulted
need not go
back to the
wall.

And if the constable is assaulted in the execution of his office, he need not go back to the wall, as private persons ought to do; and if in the striving together, the constable kills the assailant, it is no felony; but if the constable is killed, it shall be construed premeditated murder. *Hale's Pl. 37.*

VI. Concerning the expences of his office.

Charges of
making di-
strefs.

By the 27 Geo. 2. c. 20. The constable executing a justice's warrant for levying a penalty, or other sum of money directed by any act of parliament, by distress, may deduct his own reasonable charges of taking, keeping and selling the goods distrained; returning the overplus on demand, after such penalty or sum of money and charges deducted.

Charges of
conveying
an offender
to gaol.

A person committed to gaol, for any offence, shall bear his own charges (if able) for conveying him to the said gaol, and the charges of those who guard him thither; and if he shall refuse at the time of commitment to defray the same, or shall not then pay the same, the justice committing him shall by warrant to the high or petty constable where the person shall inhabit, or from whence he shall be committed, or where he shall have any goods within the county, order so much to be sold thereof, as by his discretion shall satisfy the same; the appraisement to be made by four honest inhabitants, 3 J. c. 10. s. 1.

And if he have not money nor goods within the county sufficient to bear the charges of himself, and of those who convey him to the gaol or house of correction, the constable may apply to a justice, who may upon oath examine into and ascertain the reasonable expences, and shall by his warrant (without fee) order the treasurer to pay the same, except in *Middlesex*, where the same shall

shall be paid by the overseers of the parish where the person was apprehended. 27 G. 2.

And by the 13 & 14 C. 2. c. 12. It is enacted, that whereas constables may be at great charge in relieving, conveying with passes, and in carrying rogues, vagabonds and beggars to the house of correction, and have no power to make rates to reimburse themselves; therefore the said constables, together with the churchwardens and overseers, and other inhabitants, shall make a rate in like manner as the poor rate by the 43 Eliz. c. 2. which being confirmed under the hands and seals of two justices may be levied by distress.

Charges
about va-
grants.

VII. Concerning his account and removal from his office.

The high constables shall at the general or quarter sessions, if required, account for the general county-rate by them received; on pain of being committed to gaol until they shall account; and shall pay over the money in their hands, according to the order of the said court, on the like pain; and all their accounts and vouchers shall, after having been passed at the said sessions, be deposited with the clerk of the peace, to be kept amongst the records, and inspected by any justice without fee. 12 G. 2. c. 29. s. 8.

Account.

And in such manner as constables are to be chosen, in the same manner and by the like authority, are they to be removed; so as if there shall be cause to remove and put an high constable from his place, it hath not been thought fit that any one or two justices should do it upon their discretion; but that it should be done by the greater part of the justices of that division, and that for some just cause; or else that it be done at the sessions. *Dalt. c. 28.*

Removal.

And

Constables.

And it seems clear, that the sheriff or steward of the leet having power to place a constable in his office, have by consequence a power of removing him. 2 *Haw.* 63.

And also the justices of the peace have always used, for good cause, to displace all such constables as have been chosen and sworn by them. 2 *Haw.* 65.

And by the 13 & 14 C. 2. c. 12. If a constable shall continue above a year in his office, the sessions may discharge him and put another in his place, 'till the lord shall hold a leet. *f.* 15.

And if the court, or other judge, shall refuse to discharge a constable, the King's Bench may compel them by *mandamus*. 2 *Haw.* 65.

Indictment for not taking the office.

Middlesex. **T**HE jurors, &c. upon their oath present, that *A. O.* late of — in the said county, yeoman, on the — day of — in the — year of the reign of — and long before, and always after until the day of the preferring this indictment, was and is an inhabitant, and residing within the parish of — aforesaid in the said county, and an able person to serve the office of constable for the same parish of — and he the said *A. O.* on the said — day of — in the year aforesaid in the parish aforesaid, lawfully and in due manner was elected and chosen by — ancient inhabitants of the same parish, according to the ancient custom of choosing constables for the said parish, into the office of constable for the said parish of — in the said county, for one year from thence next following, to do and execute all and singular those things which belong to the office of constable, and that the said *A. O.* afterwards, to wit, on the —

Constables.

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— day of — in the year aforesaid at the parish aforesaid, in the said county, had due notice thereof, and then and there was required to appear before J. P. esquire, then and yet one of his majesty's justices assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, on the said — day of — in the year aforesaid, to take his oath for the due executing the said office of constable for the same parish, according to the duty of that office; nevertheless the said A. O. his duty in that behalf not regarding, but contriving and intending wholly to neglect to serve the said office of constable, after he the said A. O. was so elected and chosen into the said office as aforesaid, to wit, on the said — day of — in the year aforesaid, and continually afterwards, until the day of taking this inquisition, at the parish aforesaid in the said county, unlawfully and contemptuously did refuse, and still doth refuse, to take his said oath for the due executing the said office of constable, and in any wise to execute the same office, to the great hindrance of justice, in contempt of our said lord the king, and to the evil example of all others in the like case offending, and against the peace of our said lord the king.

Constable's oath.

You shall well and truly serve our sovereign lord the king (and the lord of this leet, if sworn in a court leet) in the office of constable for the parish of — for the year ensuing, [or until you shall be lawfully discharged therefrom; or until another shall be sworn in your place:] You shall well and truly do and execute all things belonging

Constables.

belonging to the said office, according to the best of your skill and knowledge.

So help you God.

Constables
in London.

There being some variation in the manner of election, and the oath and office of constables in the city of *London*, with respect to other constables appointed in the country, some observations may be necessary in relation thereto.

Number of
constables.

And first, the city is divided into 26 wards, and every ward into the like number of precincts, over each of which is a proper constable, so that there are in *London* 676 constables.

Manner of
election.

All those constables, it is said, ought to be freemen of the city: They are nominated by the inhabitants of the precinct on *St. Thomas's* day, and confirm'd or disallow'd at the court of wardmote; and after they are confirm'd, they are sworn in their offices at a court of aldermen on the next *Monday* after *Twelfth* day. *Calib. Rep.* p. 129.

Oath.

The substance of the oath is as follows:

To keep the king's peace to the utmost of their power; to arrest affrayers, rioters, and such as breed quarrels to the breach of the peace, and to lead them to the house of correction, or compter of one of the sheriffs; and in case of resistance, to make outcry upon them, and pursue them from street to street, and from ward to ward, 'till they are arrested.

Nuances,
&c.

To search for common nuances in their respective wards; (being required by scavengers, &c.) and upon request to assist the beadle and raker in collecting their salaries and quarterage; to present to the mayor and ministers of the city defaults relating to the ordinances of the city; to
certify

certify in the mayor's court, once a month, the names and surnames of all freemen deceased; and also of the children of such freemen, being orphans.

And by the articles of the wardmote inquest, New com-
ers. constables are to certify the name, surname, place of dwelling, profession and trade of every person who shall newly come to inhabit in their precincts, and to keep a roll thereof: In order to this, they are to make inquiry at least once a month what persons are lately come there; and if they find by their own confessions, or the records of the alderman's books, that such new comers are ejected from any other ward, for bad living, or any misdemeanor, and refuse to find sureties for their good behaviour, warning is to be given to them and their landlords that they depart; and on refusal they may be imprisoned, and their landlords fined a year's rent, agreed for by such new comer. *Calabr. Rep.* 138.

Constables in each ward are to attend the watch by turns, one every night, and to go the rounds; and the beadies every night are to warn such persons as are to serve upon the watch in their several precincts; and if they refuse to appear, the constable may hire others in their stead, and they shall pay the constable according to the custom of the city. The common council appoint the watchmen. Watch in
London.

They are to certify to the lord mayor and common council of the city, the names of all such persons as shall interrupt or hinder them in the discharge of their offices. Obstrueting
constables.

These are the ancient articles of the oath, and extraordinary business of the constables of London: their power, And in the city of London by custom, a constable is not only constable within the precinct for which he is chosen, but over all the ward, and over all the

Constables.

Nightly
constables
and watch,
how ap-
pointed by
new act,
10 G. 2.

the city of London. *Per Wild. Trin. 30 Car. 2. Anon.*

By a late statute the court of common council are to meet on the first of *October* in every year, and order a sufficient number of nightly constables, beades and watchmen, for the city of *London* and liberties; and the aldermen and common council men of wards, are to make an assessment on the inhabitants to bear the charges thereof.

The constables shall keep watch and ward from the 10th of *September* to the 10th of *March*, from nine o'clock in the evening 'till seven the next morning; and from the 10th of *March* to the 10th of *September*, from ten in the evening 'till five next morning; and shall use their utmost endeavours for preventing fires, robberies and disorders, and arrest malefactors. And they shall go twice or oftener about their wards every night; and the watchmen are to apprehend all suspected persons, &c. and deliver them to the constable of the night, who shall carry them before a justice of peace.

And constables misbehaving themselves shall forfeit 20 s. and the lord mayor, or two justices of the city, may hear and determine offences, and levy penalties by distress of goods, &c. *Stat. 10 Geo. 2. c. 22.*

Such constables of *London* as are chosen into the office, are obliged to place the king's arms, and the arms of the city, over their doors; and if they reside in alleys, at the end of such alleys, towards the street, to signify that a constable lives there, and that they may be more easily found when wanted.

The dean, or high steward of *Westminster*, or his deputy, is required (calling to his aid the burgesses, if the dean, or high steward, or his deputy, shall think fit) at the court leet to be holden on *Tuesday* next after *Michaelmas* day yearly, to appoint

Constables.

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appoint 80 fit persons residing within the city and liberty of *Westminster*, being artificers, or persons using any trade of buying or selling (alehouse-keepers, victuallers, or persons retailing spirituous liquors, only excepted) to be constables for the said city and liberty, being duly presented thereto in manner aftermentioned and directed. *Stat. 27 Geo. 2. c. 25.*

The constables so to be appointed shall be chosen out of the several parishes in *Westminster* hereafter mention'd, that is to say,

Out of the parish of <i>St. Margaret</i>	14
of <i>St. John the Evangelist</i>	4
of <i>St. Martin in the Fields</i>	14
of <i>St. George Hanow. Square</i>	12
of <i>St. James</i>	14
of <i>St. Ann</i>	8
of <i>St. Paul Covent Garden</i>	6
of <i>St. Clement Danes</i>	6
of <i>St. Mary le Strand</i>	2

The constables so appointed shall take the usual oath of office, and execute the office for a year, or until other persons shall be appointed in their stead, or find able persons, to be approved of by the court leet, to serve as their deputies. *Same Statute.*

This act directs the summoning a leet jury, who are to present double the number above-mentioned for each parish, of persons to serve the office of constable, out of which number the court shall, in the proportions aforesaid, appoint 80 persons to serve the office of constable for the year ensuing. *Same Statute.*

Any person so appointed, and refusing to serve, shall forfeit 8 *l.* and no person to serve as constable more than once in seven years. *Same Statute.*

The said dean, or high steward, or his deputy, shall, at the said court leet to be holden on *Tuesday*
next

Constables.

next after *Michaelmas* day yearly, appoint an able person, being an artificer, or using some trade of buying and selling, not being an alehousekeeper, victualler, or retailer of spirituous liquors, to be high constable for the city and liberty of *Westminster* for one year, or until another shall be appointed. No person to serve the office of high constable for more than three years together. Penalty of 20*l.* for refusing to serve. *Same statute.*

The duty and authority in general of constables in their several towns, parishes, &c. is much the same as the high constable's in his hundred: They are to keep the peace, and may break into a house to see the peace kept; make fresh pursuit into another county, &c. They may also command all persons to assist them, and take into custody any whom they see committing a felony, or breaking of the peace; but a constable cannot detain a man at his pleasure, only stay him to bring him before some justice to be examined and committed. *Dalt. c. 18. H. P. C. 93, 135.*

He may arrest a person who drops a child in a parish with intent that it may perish, or the parish be charged with the keeping. *Owen 98. Cro. Eliz. 287.*

For treason or felony, or suspicion thereof, or where a man dangerously wounds another, so that his life is in danger, the constable may break a house to apprehend the offender, but he ought first to ask leave to enter. *5 Co. 91. 1 Bulstr. 146. 1 Brownl. 211.*

By the original power in a constable, he may for breach of the peace, and some misdemeanors less than felony, imprison a man: And if an offence be committed, for which a constable may arrest, he may convey the offenders to the sheriff or the gaoler; tho' the safest way in all cases is to bring them to a justice, and by him the prisoner may

may be bailed, or committed to prison, as the case shall require. 2 *Hale's Hist. P. C.* 88, 90.

Part of their office consists in attendance on justices of peace, at courts leet, and on coroners for executing of warrants; they are likewise to attend upon judges of assize at the gaol delivery, justices at the general and special sessions, and other meetings, to execute warrants, and present offences upon oath, according to articles exhibited, &c.

It is the duty of all constables to levy the penalty of 20 s. by distress, for the poor, on all persons keeping alehouses without licence; if he does not, or if there be no distress, he neglects to whip the offender, he is liable to a forfeiture of 40 s. or to commitment till the alehousekeeper is punished. *Stat. 1 Jac. 1. c. 9. 1 Car. 1. c. 4.*

Not delivering the poors moiety of the penalty of 6 s. 8 d. per barrel, for selling ale to an unlicensed alehousekeeper, over to the churchwardens, &c. and they not distributing it to the poor, forfeit double the value. *Stat. 4. Jac. 1. c. 4.*

And not levying 20 s. on alehouse-keepers for selling less than measure, he forfeits 40 s. to the use of the poor, to be levied by distress; and if no distress, to be committed. Selling in unmarked vessels, &c. incurs a forfeiture not above 40 s. nor under 10 s. one moiety to the informer, the other to the poor. 11 & 12 W.

Not levying 10 s. on alehouse-keepers for suffering persons to sit tipling, to forfeit as above. *Stat. 1 Jac. 21 Jac. 1. c. 7.*

Also not levying 3 s. 4 d. on persons convicted of tipling, forfeits 10 s. but in all these cases there must be a justice's warrant.

Any person refusing to be examined upon oath, and give evidence before a justice of peace against any other person suspected of selling ale, beer, or other liquors without a licence, forfeits 10 l. to be levied

Constables.

levied by distress and sale of his goods, and to be paid to the overseers of the poor. *Stat. 26 Geo. 2. c. 31.*

Every person convicted of selling ale, beer, or other liquors without a licence, shall forfeit as follows, that is to say, for the first offence 40*s.* for the second 4*l.* for the third and every other offence 6*l.* to be levied by distress and sale of his goods; one moiety to the informer, the other moiety to the overseers for the use of the poor; and in default of distress, to be committed to the common gaol, or other prison, or house of correction for one month for the first offence, for the second for two months, and for the third until discharged by order of the court of general quarter-sessions. *Same statute, and statute 28 Geo. 2. c. 19. See stat. 29 Geo. 2. c. 12.* an additional duty.

Bawdy-
houses.

A constable being informed that persons resort to a common bawdy-house, and there keep company with lewd women, may with others call'd to his assistance, enter such house, and arrest the offenders for a breach of the peace. *Mich. 13 H. 7.* But he must find them in company with lewd women; and he is to carry them before a justice of peace, which he may do without warrant, and the justice may bind them to their good behaviour. *Dalt. 214, 469.*

The method
of prosecu-
ting disor-
derly houses.

If any two inhabitants of any parish, paying scot and lot, give notice in writing to any constable of such parish of any person keeping a bawdy-house, gaming-house, or any other disorderly house in such parish, the constable shall forthwith go with such inhabitants to a justice of peace, and shall, upon such inhabitants making oath that they believe the contents of such notice to be true, and entering into a recognizance of 20*l.* each to produce material evidence against such person for such offence, enter into a recognizance of

of 30*l.* to prosecute with effect such person for such offence, and shall be allowed all reasonable expences of such prosecution, to be ascertained by any two justices of the peace, and paid the same by the overseers of the poor. And in case such person shall be convicted of such offence, the overseers of the poor shall pay 10*l.* to each of such inhabitants. And in case the overseers shall not pay to such constable such expences of the prosecution, or shall not pay upon demand the said sum of 10*l.* and 10*l.* such overseers, and each of them, shall forfeit to the person intituled to the same double the sum refused or neglected to be paid. *Stat. 25 Geo. 2. c. 36.*

Provided, that upon such constable's entering into such recognizance, the justice of peace shall forthwith make out his warrant to bring the person accused before him, and bind him or her over to appear at the next general or quarter sessions of the peace, or next assizes, there to answer, &c. and may take security for such person's good behaviour in the mean time. *Same statute.*

Constable refusing or neglecting to go before a justice, or to enter into such recognizance, or being wilfully negligent in carrying on such prosecution, shall forfeit 20*l.* to each such inhabitant so giving notice. *Same statute.*

Any person who shall appear, act or behave as master or mistress, or as the person having the care, government or management of any house, gaming house, or other disorderly house, shall be deemed the keeper thereof, and be liable to be prosecuted and punished as such notwithstanding he or she shall not in fact be the real owner or keeper thereof. *Same statute.*

Any person may give evidence upon such prosecution either against or for the defendant, notwithstanding he or she is a parishioner, or has entered

D

tered

Whodeemed
keepers of
such houses.

Who wit-
nesses.

Constables.

tered into such recognizance as aforesaid. *Same statute.*

No indictment for such offence to be removed by *Certiorari*. *Same statute.*

Houses for
dancing, &c.

Any house, room, garden or other place, kept for publick dancing, musick, or other publick entertainment of the like kind within 20 miles of *London* or *Westminster*, without a licence had for that purpose from the last preceding *Michaelmas* quarter sessions of the peace, shall be deemed a disorderly house or place; and any constable or other person authorized by warrant of a justice of peace may enter such house or place, and seize every person found therein, to be dealt with according to law. *Stat. 25 G. 2. c. 36.*

Distress.

The constable is to assist the landlord or person distraining in taking distresses; as where any goods or chattels shall be taken in distress for any rent reserved, and due upon any lease or contract, and the tenant or owner of the goods shall not within five days after such distress taken and notice thereof given, and of the cause, left at the dwelling-house, or most notorious place on the premises charged with the rent distrained for, replevy the same according to law, then the landlord or person distraining, may with the sheriff or under-sheriff of the county, or with the constable of the hundred, parish or place where the distress shall be taken, (who are required to be aiding and assisting therein) cause the goods and chattels to be appraised by two sworn appraisers, and afterwards sell the same for the best price, towards satisfaction of the rent and charges of making the distress, appraisement and sale, leaving the overplus in the sheriff's or constable's hands for the use of the owner. *Stat. 2 W. & M. c. 5.*

The under-sheriffs, constables, &c. are to administer an oath to the appraisers to appraise the goods truly; and if the appraisers value goods
distrained

Constables.

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distraigned too high, they shall be obliged to take them at the appraised price.

*You shall swear that you will faithfully ap- Appraiser's
praise and value the goods now taken in distress, oath.
and mentioned in the inventory to you shewn, as
between buyer and seller, according to the best of
your skill and understanding:*

So help you God.

*An inventory of the goods and chattels seised and
distraigned by A. B. of, &c. in the house of
C. D. of, &c. for 10 l. being one half year's
rent due to the said A. B. at Lady-day
last, taken the ——— day of ——— &c.
for the rent aforesaid.*

l. s. d.

In the room forwards

One looking glass, one great- ———
arm'd chair, &c. ——— ———

In the room backwards

One round mahogany table, &c. ———

In the kitchen

Half a dozen of wooden chairs, &c. —

Valued in all at twenty pounds one shilling.

Witness our hands this ——— day
of ——— &c. in the year of our
lord 1759.

*W. L. }
M. N. } Sworn appraisers.*

D. H. Constable.

Notice of
distress.

Mr. C. D.

TAKE notice that I have this — day of — &c. seized upon part of your goods in your house in, &c. as a distress for the sum of 10*l.* being half a year's rent of the said house due to me at *Lady-day* last, and have taken an inventory thereof, (a copy of which is herewith left) and if you do not pay the rent due as afore-said, or replevy the goods in the said inventory mentioned, I shall in five days make sale thereof, according to the statute in such case lately made and provided.

Your humble servant,

A. B.

The duty of constables in other particulars will be found in the course of this work, under the title of *Churchwardens* and *Parish*.

Parish. (Overseers.)

BEFORE I begin to treat of this extensive title, I shall premise one general clause in the statute of the 17 Geo. 2. c. 38. s. 4. which seems to affect the whole law relating to this title, to wit, *That if any person shall be aggrieved by any thing done or omitted by the churchwardens and overseers, or by any justice of the peace, he may, giving reasonable notice to the churchwardens or overseers, appeal to the next general or quarter sessions, where the same shall be heard and finally determined; but if reasonable notice be not given, then they shall adjourn the appeal to the next quarter-sessions, and the court may award rea-*
2.
sonable

sonable costs to either party, as they may do by the 8 & 9 W. in case of appeal concerning settlements.

This being premised I shall proceed in the order following; that is to say,

- I. Concerning the appointment of overseers, with their duty thereupon; and therein of the poor's rate, &c.
- II. Of settlements.
- III. Of removals.
- IV. Of the poor rate, and other helps towards their relief.
- V. Of the relief and ordering of the poor.
- VI. Of overseers account.
- VII. Penalty of overseers for the neglect of their duty.
- VIII. Indemnity of overseers in the performance of their duty.

I. Appointment of overseers, with their duty thereupon.

The churchwardens of every parish, and four, Appoint-
three, or two substantial householders there, as shall ment of
be thought meet, having respect to the greatness of overseers in
the parish, to be nominated yearly in Easter week, parishes and
or within one month after Easter, under the band townships.
and seal of two or more justices of the peace in the
same county, whereof one to be of the Quorum,
dwelling in or near the parish or division, shall be
called overseers of the poor of the same parish.
43 Eliz. c. 2. s. 1.

And whereas the inhabitants of Lancashire, Che-
shire, Derbyshire, Yorkshire, Northumberland,
the Bishoprick of Durham, Cumberland and West-
morland, and many other counties in England and
Wales, by reason of the largeness of the parishes

Poor. (Overseers.)

cannot reap the benefit of the said act of the 43 Eliz. it is enacted, that all and every the poor, needy, impotent and lame persons, within every township or village within the several counties aforesaid, shall be maintained, provided for and set on work within the several and respective township and village wherein he shall inhabit, or wherein he was last lawfully settled, and there shall be yearly chosen and appointed two or more overseers within every of the said townships or villages respectively. 13 & 14 C. 2. c. 12. s. 21.

And if any overseer shall die, or remove, or become insolvent before the expiration of his office, two justices (on oath thereof made) may appoint another in his stead. 17 G. 2. c. 38. s. 3.

And if in any place no overseer shall be appointed, every justice of the division shall forfeit 5 l. to the poor of such place, to be levied by the churchwardens and overseers, or one of them, by distress and sale by warrant from the sessions. 43 Eliz. c. 2. s. 10.

Form of an
appointment
of overseers.

Hampshire, **W**^E, two of his majesty's justices of the peace in and for the said county, one whereof is of the *Quorum*, do hereby nominate and appoint *A. B.* and *C. D.* being substantial householders of the parish ——— [or township] of ——— in the said county, to be overseers of the poor of the said parish [or township], according to the direction of the statute in that case made and provided. Given under our hands and seals ——— (within a month after Easter.)

But by a remedial clause in the act of the 17 Geo. 2. c. 38. It is enacted, that the distress for the poor rate shall not be deemed unlawful for any defect or want of form in the warrant for the appointment of overseers. s. 8.

If

If any person shall find himself aggrieved, by any act done by the said justice, he may appeal to the general quarter-sessions, whose order therein shall bind all parties. 43 Eliz. c. 2. §. 6. Appeal against the order of appointment.

M. 14 G. 2. *King and Jones*. A person was indicted for not taking upon him the office of overseer; and by the court it was held to be an offence indictable; for that altho' the statute appoints a penalty, yet that penalty is not for refusing to take the office, but for neglect of duty in that office; and where a statute commands a thing, and appoints no penalty for disobedience, such offence is indictable as a contempt of the law. *Sess. C. V. 2. 187.*

The overseers thus appointed, and taking upon them the office, shall within 14 days receive the general books of assessments and of accounts from their predecessors, and what money and materials shall be in their hands, and reimburse them their arrears. 17 G. 2. c. 38. §. 1, 11, 13.

And they shall take order from time to time, with the consent of two such justices as aforesaid, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain them; and also for setting to work all such persons married or unmarried, having no means to maintain them, and using no ordinary and daily trade; which said churchwardens and overseers, or such of them as shall not be lett by sickness, or other just excuse to be allow'd by two such justices, shall meet at least once a month in the church on sunday in the afternoon after divine service, there to consider of some good cause to be taken, and order to be set down in the premisses; upon pain that every one of them absenting themselves without lawful cause from such monthly meeting, or being negligent in their office, shall forfeit for every default 20 s. to the poor; to

Poor. (Overseers.)

be levied by some or one of the churchwardens and overseers, by warrant from two such justices, by distress and sale; or in defect thereof, any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize, 'till the said forfeiture shall be paid. Provided, that if any person shall be aggrieved by any act done by the said churchwardens and other persons, he may appeal to the general quarter-sessions, whose order therein shall bind all parties.

In the church] But the penalty for not meeting in the church shall not be inflicted on the overseers of extraparochial places; because they have no church to meet in. 8 Mod. E. 7 G.

Of the poor's rate.

Overseers
power in
making
rates.

Overseers of the poor have power to rate and tax every inhabitant and occupier of houses, lands, tythes, underwoods, mines, &c. to raise money towards the relief of the poor, providing a competent stock of flax, hemp, &c. to set the poor on work, and also for the putting out poor children apprentices; which rate being allowed by two justices, the churchwardens and overseers may levy the same by distress and sale, and for want of distress, the party may be committed to gaol 'till payment. 43 C. 2.

Persons and
things to be
taxed.

All persons, the clergy not excepted, must contribute to the relief of the poor. 2 Keb. 251. And all things that bring in an annual profit may be taxed; tolls are taxable. 3 Keb. 594.

But if the overseers make an unequal rate, they may be indicted for it, and fined. 1 Keb. 173.

Occupiers
of lands.

All assessments ought to be made according to the visible estate the party hath or possesseth in the parish where the assessment is made, and not elsewhere,

where, the words of the act directing a taxation on the occupiers. 2 Bulstr. 354.

The tax is to be in proportion to the yearly value, and not the quantity of land; and as it arises by reason of the land in the parish, the farmer or renter is to pay it, and not the landlord, and the landlord is never assess'd for his rent. According to yearly value.

It is either upon lands or goods; but a farmer being assess'd for the land he occupieth, shall not be assess'd for his stock on that land necessary for manure, nor the profits for which he has already been taxed; but for other stock he is taxable. And a clothier, &c. having an estate in lands, and a great stock of wares, may be taxed for both. Personal estate taxed. Blackerby's Cases 203, &c.

When goods are rated, they ought to be after the value of lands, (that is to say,) goods of the value of 100 l. should be rated at 5 l. per Annum, or as lands are; and persons must be charged only in that place where the goods are at the time of assessment, as in case of lands. After the rate of lands.

And if a man have no goods where assess'd, and is distrained, he may have an action of trespass, &c. Wrong assessments.

The inhabitants of Lancashire, Cheshire, Yorkshire, Northumberland, Durham, Cumberland and Westmerland, by reason of the largeness of their parishes are to have overseers, and to relieve and provide for the poor within their respective townships or villages, as in parishes. Stat. 13 & 14 Car. 2. and other counties in England and Wales are generally mentioned in the preamble of the act. Particular counties how to provide for their poor.

If a parish extends into two counties or liberties, the overseers are to act in the whole parish, and not divide themselves; but the justices shall not intermeddle with that part which lies out of their jurisdiction. 1 Vent. 350. Parish in two counties.

How officers
to act.

But if there be a churchwarden and several overseers of the poor, some for part of the parish in one county, and others for the other part in the other county, and the rates are several, and accounts separate, they shall be taken as distinct parishes: The case of *St. Botolph without Aldersgate*, lying part in *London* and part in the county of *Middlesex*. *Raym.* 477.

Power of
justices in
taxation.

If a parish is not able to maintain its own poor, two justices may tax any other parish within the hundred; and the sessions have power to tax the whole county. *Stat.* 43 *Eliz.* But when the cause of taxation of other parishes, for inability of those wherein the poor are resident, ceases, the tax shall cease also; and the contribution lessen as there shall be occasion. *Mod.* 374. *Littleton* 73.

Publick notice to be
given of
rates.

The churchwardens and overseers, or other persons authorized to take care of the poor in every parish, township or place, shall give publick notice in the church of every rate for the relief of the poor, allowed by the justices of peace, the next Sunday after the same shall have been so allowed; and no rate shall be esteem'd valid and sufficient, so as to collect and raise the same, unless such notice shall have been given. *Stat.* 17 *G. 2. c. 3.*

Inhabitants
may inspect
and have
copies.

The inhabitants may inspect the rates, paying 1 s. and have copies of them, or any part of them, paying 6 d. for any 24 names. *Same statute, s. 2.*

Penalty.

Churchwardens or overseers, &c. not permitting such inspection, or refusing to give copies, forfeit to the party aggrieved 20 l. to be recovered by action of debt, &c. *Same statute, s. 3.*

Form of a
rate or as-
sessment for
the poor.

N. in county of Berks, ss. **A** _____ day of _____ &c.
on the inhabitants of the parish of N. aforesaid,
for and towards the relief of the poor there for,
the

Poor. (Overseers.)

59

the year, &c. viz. being the first, or second further rate for relief of the poor of the said parish for the year 1733, at 9 d. in the pound.

			s.	d.
A. B. gentleman	_____	_____	10	0
C. D. yeoman	_____	_____	5	0
E. F. taylor	_____	_____	4	0
G. H. linendraper	_____	_____	3	6

W. H. Churchwarden.

L. M. }
P. O. } Overseers.

We whose names are underwritten, being inhabitants of the parish of N. aforesaid, have perused the above rate and assessment, and do hereby declare that the several sums abovementioned are by our approbation rated upon the respective persons concerned, and that the same is an equal rate, according to the best of our judgments.

P. Q. }
R. O. } Parishioners.
T. L. }
A. M. }

Memorandum, this _____ day of _____ &c. the above rate and assessment was ratified and allowed by us, two of his majesty's justices of the peace for the county aforesaid.

T. O.
L. C.

In the large parishes about London and Westminster, they usually make a collecting book for the poor's rate in the following form:

Westminster, ss. **A** Rate or assessment of sixpence in the pound made the _____ day of _____ &c. being Easter Tuesday in the year of our lord 1759, for and towards the

Poor. (Overseers.)

the relief of the poor of the parish of, &c. in the liberty of the city of *Westminster* aforesaid, and county of *Middlesex* for the said year 1759, by the churchwardens and overseers of the poor of the said parish, by and with the assent of two of his majesty's justices of peace for the said city and liberty, (of whom one is of the *Quorum*) according to the statute in that case made and provided.

Churchwardens.

} Overseers of the poor.

If there be a select vestry, some of them, and such of the ancient inhabitants as are present at making the rate, sign here.

Inhabitants.

The above is to be inserted in the first page of your collecting book.

Then begin a new leaf thus :

Rents.	Inhabitants names.	Rates.
<i>l. s. d.</i>		<i>l. s. d.</i>
40 00 00	A. B. esquire,	1 00 0
37 00 00	Mr. C. D.	00 18 6
25 00 00	Mr. E. F.	00 12 6

In this manner set down the names of the several parishioners, the rents they pay, and the sums they are assessed according to the above rate; and then beginning a new page, you make a summary account of the rents and rates, being the sum total of each page, as follows :

Account of Rents and rates.
The foregoing

	<i>l. s. d.</i>	
fo. 1.	745 10 00	18 11 9
fo. 2.	908 15 00	22 14 4 $\frac{2}{1}$
And so of the rest		
Total	————	

On

On a fresh leaf then draw up the confirmation of the justices after the following manner.

Westminster in the county of Middlesex, to wit. **WE** whose names are hereunto subscribed, two of his majesty's justices of the peace for the city and liberty aforesaid, (one of us being of the *Quorum*) have seen and perused the foregoing rate and assessment for the poor of the parish of, &c. and do hereby confirm and allow the same, and appoint you *E. F.* and *G. H.* two householders of the said parish, to collect and gather the same, and render an account thereof according to law. Given under our hands and seals the ——— day of ——— 1759.

Note; Duplicates are kept of all collecting books.

The rate being thus confirmed, if any person shall refuse to pay, it may be levied by warrant from two justices by distress; and if that cannot be taken, then two justices may commit the person refusing, without bail, till payment. Rates to be levied by distress.

It has been held, that by the statute the poor's rates ought to be assessed monthly, and not quarterly, &c. for otherwise a man cannot remove in the middle of a quarter, but he will be twice rated; nor can a distress be taken by a general warrant made at the time of the rate, but there must be a special; neither can it be taken for a quarter before it is ended, if the custom is to rate quarterly. *2 Salk. 532.* Poors rates how often to be made by the statute.

The quarter-sessions will relieve such persons as are grieved by these rates or taxes. The church-wardens and overseers of a parish made a rate for the relief of the poor, which was confirm'd by two justices of peace, but all was rated upon the real estates of the inhabitants, and none on the Relief against rates in the quarter-sessions.

¶0002. (Overseers.)

the personal ; and therefore an appeal was brought to the quarter-sessions, where the rate was quashed, and the overseers, &c. ordered to make a new rate upon the real and personal estates. 2 Salk. 483.

Adjudged in
K. B.

It was objected, that the sessions had no power to vacate whole rates ; but adjudged that they may quash such rates, and refer it to the church-wardens and overseers to make new ones, or they may make a new rate themselves. *Same.*

Overseer
dying or
removing.

Overseer dying, or removing out of the parish, two justices may appoint another in his stead. *Stat. 17 G. 2. c. 38. s. 1.*

Appeal from
rates.

Persons aggrieved by any rate, or having reasonable objections to it as unequal, may appeal to the quarter-sessions. *Same statute.*

Note ; Other matters relating to overseers will frequently occur under title (¶0002.)

Of settlements.

The foundation of all the settlements as they stand at this day is on the 13 & 14 C. 2. upon which single act there have been more cases adjudged than upon any other fifty acts in the statute-book.

After having first premised one general rule, which controuls almost all the cases of settlements, viz. that no settlement can be legal which is brought about by practice or compulsion, I shall proceed in the following method.

I. Of persons having no settlement.

II. Of certificates.

III. Of settlements by birth, viz. of bastards and others.

IV. Of the settlement of children with their parents.

V. Of

- V. Of settlement by apprenticeship.*
- VI. Of settlement by service.*
- VII. Of settlement by marriage.*
- VIII. Of settlement by continuing 40 days after notice.*
- IX. Of settlement by paying rates.*
- X. Of settlement by serving a parish office.*
- XI. Of settlement by renting 10l. a year.*
- XII. Of settlement by a person's own estate.*

I. Of persons having no settlement.

Whereas the number of poor within England and Wales is very great and burdensome; and whereas by reason of some defects in the law poor people are not restrained from going from one parish to another, It is enacted, that within 40 days after any such persons shall come to settle in any tenement under 10l. a year, two justices, (one whereof must be of the Quorum) may remove them to the place where they were last legally settled. 13 & 14 C. 2. c. 12. f. 1.

Poor within England and Wales] By these words of restriction, and the word [such] afterwards, which seems to have reference to those kinds of poor only, and by the direction of removing them to the place where they were last legally settled, which can only mean where they were last legally settled within the then kingdom; it may seem that other poor, not belonging to England or Wales, are not within the regulations of this statute.

Within 40 days] The statute of the 1 J. 2. requires that such 40 days continuance shall not make a settlement but from the time of delivering notice in writing; and by the 3 W. it must be from the time of the publication of such notice in the church: But it hath been always understood

derstood that a person not removeable need not give such notice, and that a person continuing 40 days *unremoveable*, and a person *not removed* for 40 days after such notice given and published, shall equally gain a settlement. Now the following case happened, *E. 2 G.* between the parishes of *St. Giles* and *St. Margaret*: An *English* woman was married to a foreigner who had no settlement in *England*; the husband continued for the space of 40 days in a parish *unremoveable*, for that there was no place to which he could be removed; and it was urged, that the wife continuing with him as part of his family for 40 days *unremoveable*, she did thereby gain a settlement. But by *Holt* chief justice, where a person stays 40 days in a place, whence he hath a right not to be removed, that gains a settlement; otherwise where he only stays in a place, because they do not know where to remove him. And in this case he said that he did not know that a foreigner had a right to be maintained in any place to which he came, but that they might let him starve. *Seff. C. V. 1. 97.*

But there is another thing to be observed. It appears in that case that the man's situation in the parish was not such as the law calls *unremoveable*, as if he had rented a tenement of 10 *l.* a year, but that in fact he was *removeable* if they had known whither to have sent him. But suppose, that he had rented a tenement of 10 *l.* a year; or which is the same thing, that a *Scotchman* or *Irishman* had rented a tenement of 10 *l.* a year; the question is, whether by continuing thereupon 40 days *unremoveable*, he would thereby have gained a settlement in pursuance of this statute? If it is answered in the affirmative, then this will follow; that if he comes to reside upon a tenement under 10 *l.* a year, and gives notice in writing, and causes the same to be published as the law requires,

quires, and continues 40 days after such publication *unremoved*, he must by the same statute gain a settlement: And if so, a *Scotchman* or *Irishman* may settle himself and his family in 40 days time, in any parish whatsoever, where he can procure any little cottage to live in, by giving and causing to be published such notice as aforesaid. For removed he cannot be; and continuing *unremoved* for 40 days after the publication of such notice, he becomes afterwards *not removeable*; and being not removeable, and settled, is the same thing. On the other hand, if we have recourse to the above observation, and say that this statute extends only to the poor of *England* and *Wales*, then this will follow; that a *Scotchman* or *Irishman* can gain no settlement in *England* by virtue of this statute, and if not by this, then not by any other of the subsequent statutes concerning settlements, for that they are all relative thereunto, and depending thereupon; that is to say, in these circumstances, a *Scotchman* or *Irishman* can gain no settlement in *England*, neither by renting 10 *l.* a year, nor by continuing 40 days after notice, nor by apprenticeship, nor by service, nor by paying parish-rates, nor by serving a parish office; which *dilemma* seems not to have been yet determined, or consider'd.

II. Of certificates.

By the 13 & 14 C. 2. c. 12. Power is given, upon complaint of the churchwardens or overseers, within 40 days after a person is come to settle on any tenement under 10 *l.* a year, unto two justices, (one whereof must be of the *Quorum*) to remove such person to the place where he was last legally settled, *unless he give sufficient security for discharge of the parish, to be allowed by the said justices.* §. 1.

And

Poors. (Certificate.)

And by the 8 & 9 W. c. 30. It is enacted as follows: Forasmuch as many poor persons chargeable to the place where they live, merely for want of work, would elsewhere maintain themselves, but not being able to give such security as may be expected, on their coming to settle in any other place, it is therefore enacted, that if any person who shall come into any parish or place there to reside, shall at the same time procure, bring and deliver to the churchwardens or overseers of the parish or place where he shall come to inhabit, or to any of them, a certificate under the hands and seals of the churchwardens and overseers of any other parish, township or place, or the major part of them, or of the overseers, where there are no churchwardens; to be attested by two or more credible witnesses, thereby owning and acknowledging the person mentioned in the said certificate, to be an inhabitant legally settled in that parish, township or place: Every such certificate, having been allowed of and subscribed by two justices of the place from whence the certificate shall come, shall oblige the said parish or place to receive and provide for the person mentioned in the said certificate, together with his family, as inhabitants of that parish, whenever they shall happen to become chargeable to, or be forced to ask relief of the parish, township or place to which such certificate was given: And then and not before it shall be lawful for such person and his children, tho' born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed and settled in the parish or place from whence such certificate was brought. s. 1.

And by the 3 G. 2. c. 29. The witnesses who attest the execution of the certificate by the churchwardens and overseers, or one of the said witnesses, shall make oath before the justices who are to allow the same, that such witness or witnesses did see the churchwardens and overseers of the poor, whose

whose names and seals are thereunto subscribed and set, severally sign and seal the said certificate, and that the names of such witnesses, attesting the said certificate, are of their own proper hand writing: Which said justices shall also certify that such oath was made before them; and every such certificate so allowed, and oath of the execution thereof so certified by the said justices, shall be taken, deemed and allowed in all courts whatsoever, as duly and fully proved, and shall be taken and received as evidence without other proof thereof. l. 8.

Procure ——— a certificate.] H. 3^d G. 2. King and St. Ives: A mandamus was moved to compel the churchwardens and overseers to sign a certificate: But the court rejected the motion, as a very strange attempt. Sess. C. V. 2. 128.

The form of which certificate may be A certificate.
this:

Middlesex. **W**E the churchwardens and overseers of the poor of the parish of ——— in the said county, do hereby certify, own and acknowledge, that A. L. yeoman, is an inhabitant legally settled in our parish of ——— aforesaid. In witness whereof we have hereunto set our hands and seals the ——— day of ——— in the year of our lord ———.

Attested by	A. B.	} Churchwardens.
W. W.	C. D.	
C. D.	E. F.	} Overseers of the poor.
	G. H.	

We J. P. and K. P. esquires, two of his majesty's justices of the peace in and for the county of Middlesex aforesaid, do allow of the above-written certificate. And we do also certify, that
W. A.

Poore. (Certificate.)

W. A. one of the witnesses who attested the same, hath this day made oath before us the said justices, that he the said *W. A.* did see the churchwardens and overseers of the poor of the said parish, whose names and seals are thereunto subscribed and set, severally sign and seal the same; and that the names of *W. W.* and *C. D.* who are the witnesses attesting the said certificate, are respectively of their own proper hand writing. — Given under our hands this — day of —.

Such certificate] — shall oblige the said parish or place to receive and provide for the person mentioned therein.] Formerly it was held, that a certificate was only conclusive between the two parishes; but now it is held to be conclusive to all the world, as is determined in the following cases, *viz.*

M. 9 Ann. Honyton and St. Mary Axe: The question was, Whether the parish granting the certificate was bound thereby as to the parish only to which the certificate was granted, or concluded as to all parishes whatsoever. *Parker* chief justice delivered the opinion of the whole court: Before the statute a certificate was only an evidence of a private undertaking between the parishes, in the nature of a contract; but now it is a solemn acknowledgment, like the conusance of a fine; and thereby the party is own'd to be legally settled there; and as all other parishes on this certificate are bound to receive him, so the parish that certifies is concluded as to the other parishes. 2 *Salk.* 535. *Foley* 177.

And the case is put even yet stronger in the following report, *T. 20 G. 2. King and Hedron.* The parish of *Maidstone* gave a certificate to *Hedron*, acknowledging *Richard Burden*, and *Mary* his wife, and their four children, to be legally settled at *Maidstone*. Afterwards it appeared that *Mary*

Mary was not his lawful wife, but that he had a former wife then living. Upon which *Maidstone* acknowledged the settlement of the real and true wife, but not of the said *Mary* and her children; and pleaded, that it would be hard that they should be forced to take two wives, and different children. But by the court: The parish that certifies must take care for whom they certify; and the certificate is conclusive. *Sess. C. V. 2. 206. Str. 1233.*

Whenever they shall happen to become chargeable.] Yet a certificate to receive the persons whenever they become chargeable, is not binding against a subsequent settlement, for tho' it be according to the agreement between the parishes, yet a private agreement in this respect shall not alter the law. *Harrison and Lewis, 3 Salk. 253.*

III. Of settlement by birth; that is to say, of bastards and others.

Of bastards.

A bastard child is primâ facie settled where born: How far This is an uncontroverted rule, older than the statute of 13 & 14 C. 2. concerning settlements, or the 43 Eliz. which requires the poor to be maintained within their respective parishes; for in the statute of the 18 of Eliz. which takes order for the mother and reputed father to contribute towards their maintenance, it is thus recited in the preamble, concerning bastards begotten and and born out of lawful matrimony, the said bastards being now left to be kept at the charges of the parish where they were born.

Nevertheless there are divers exceptions to this rule, which are as follow:

If

Bastard born
in a place
by collusion.

If a woman comes into a place by privity and collusion of the officers where she belongs, and is there delivered of a bastard; such bastard gains no settlement notwithstanding its birth. *Caf. of S. 66.*

And in the case of *Masters and Child, H. 10 W.* It was ruled, that if a woman big with child of a bastard, and settled in one parish, is persuaded to go into another, and there be delivered; this fraud will make the parish chargeable where the mother was settled, tho' the child was not born there: But if a woman with child of a bastard come accidentally into one parish, and is persuaded by some of the parishioners to go into another parish, which she doth, and there is delivered, this shall not charge that parish which persuaded her. *3 Salk. 66.*

Bastard born
after the order of removal is made out.

Also if a bastard is born under an order of removal, and before the mother can be sent to her place of settlement, being hinder'd by water, or otherwise; such bastard shall not be settled where so born, but at the mother's settlement. *M. 10 Ann. Queen and Ichleford, Sess. C. V. 1. 133. Caf. of S. 66.*

Bastard born
in removing.

So also, if the officers are carrying a woman by virtue of an order of removal, and she be delivered on the road; the bastard shall go with the mother where she is going, by virtue of the order, notwithstanding the birth. *E. 10 Ann. Jane Grey's case, Caf. of S. 66.*

Bastard born
after the removal and before the appeal.

Again; In the case of *Much-Waltham and Peram, M. 8 W.* A woman big with a bastard child was removed by order of two justices, from *Much-Waltham* to *Peram*: Before the next sessions, she was delivered at *Peram* of a bastard child. At the sessions *Peram* appealed, and the justices adjudged the woman to be last settled at *Much-Waltham*, and ordered her to be sent back thither. After which an order was made to settle the

the child at *Peram*; which it was moved to quash, because, tho' regularly bastards must be maintained where born, yet in this case where there seems to be a contrivance, it shall not be so. The court seemed to agree to this, and a rule was made to shew cause, but none was shewed. 2 *Salk.* 474.

And further, In the case of *Westbury* and *Coston*, *H. 2 Ann.* A woman big with child was removed by order of the justices from *Westbury* to *Coston*: And pending the order before the next quarter-sessions, she was delivered of a bastard child. *Coston* appealed, and thereupon the order of the two justices was reversed; but the child was sent back to *Coston*, as the place of its birth. But by the court: The birth at *Coston* did not settle the child there, because it was under an illegal order procured at *Westbury*, which order being reversed, the matter is no more than this, that they unjustly procured the woman to go thither. And *Holt* chief justice said, tho' here be no fraud in this, yet here is a wrongful removal, and the reversal makes all void *ab initio*: Fraud, or not fraud, is not material in this case; but the settlement of the child depends upon the removal, for if that was wrong, they shall not ease themselves by it. 1 *Salk.* 121. 2 *Salk.* 532.

So also, by the statute of the 17 G. 2. c. 5. Bastard born Where any woman, wandring and begging shall in a state of be delivered of a child in any parish or place to vagrancy. which she doth not belong, and thereby becometh chargeable to the same, the churchwardens or overseers may detain her 'till they can safely convey her to a justice of the peace. And if such woman shall be detained and conveyed to a justice as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be sent thither by a vagrant pass; but the settlement of such woman shall

Poor. (Settlement by birth.)

shall be deemed the settlement of such child,
J. 25.

Bastard born in prison. A child born in the house of correction, shall be sent to the place of its mother's settlement.
2 Bulstr. 358.

And in the case of *Elfing* and the county gaol of *Herefordshire*, *H.* 2 *G.* A bastard was born in the county gaol: Resolved, that the settlement was with the mother. *Seff. C. V.* 1. 94.

Bastard born under a certificate. *T.* 5 *G.* *New Windsor* and *White Waltham*. The parish of *White Waltham* gave a certificate to a man and woman supposed to be his wife, with which they went into the parish of *New Windsor*, and had there six children. Afterwards the woman swearing they were never married, the question was, whether (upon that supposition) the children as bastards should be settled in the parish where they were born, or in the parish which gave the certificate with their father and mother. And by the court: There is no doubt but the bastard of a certificate person is settled in the place of his birth, for he is not such an issue as will follow the settlement of his father or mother, neither is such bastard *his* or *her* child within the intention of the statute, so as to be sent back with the parent. *2 Str.* 186.

But in this case the point turned chiefly upon the certificate's being conclusive, (for as the parish had given a certificate with the man and woman, as husband and wife, the court held that they were not afterwards to be admitted to dispute the validity of such marriage, but adjudged the children to be settled in the parish granting the certificate); therefore in the case of *Hyn-ton* and *Lyd-linch*, *T.* 15 *G.* 2. the matter came under debate again, which was thus: A single woman went into the parish of *Lyd-linch* with a certificate from *Hinton*; lived there a year, and then had a bastard child. The sole question was, whether the child should be

be settled in the parish where born, or in the parish giving the certificate. By the court: The certificate must be taken to be good, and all fraud to be laid out of this case, it being a year that she dwelt in the parish before she was delivered of the child; and wherever this court, in determining a settlement, adjudges upon the point of fraud, that fraud must be expressly stated; for as fraud is odious, it is never to be presumed. The cases hitherto adjudged as to this point have either depended on point of fraud, or an illegal removal. So where the child is born in a gaol, he shall be settled in the parish where his mother is; for she shall be construed to be in custody of the law, and in all other respects a parishioner. But the present case stands intirely on the 8 & 9 W. which for the encouragement of labour and industry gave power of removing persons by certificate, which certificate obliges the parish to whom given to receive and continue them in that parish 'till they become actually chargeable, and then such person is to be removed, together with his or her family, and in another place with his or her children, to the place from whence the certificate was brought. The question then is, whether the bastard is included under the words *family* or *children*; and we take it he is not: For the law takes no notice of bastard children, they are *fili nullius*, *fili populi*, and are *prima facie* settled where born. *Nelf. Bast. Seff. C. V. 2. 170. Str. 1168.*

Hitherto concerning the settlement of a bastard child; but notwithstanding the child's settlement, yet nevertheless if the mother and child have different settlements, it seemeth that the bastard child, even as all other children, shall go with the mother for nurture until the age of seven years, and be maintained at the charge of the parish where the mother is settled, as a necessary appendage of the mother, and inseparable from her;

Bastard not to be removed whilst a nurse child,

E

for

1800. (Settlement by birth.)

for there does not seem to be any law to force the child from the mother, or to compel the parish where it was born to maintain it whilst it is out of their parish.

As to its being inseparable from the mother, the following case happened, *M. 3 G. 2. Sheffreth and Walford*. The order was, to remove a woman to her settlement; and her bastard child, of two years of age, to another parish at a distance from the mother, being the place of its birth. It was objected, that the child being a nurse child, they cannot separate it from the mother, by reason of the care necessary to support so very young a child, which none can be supposed so fit to administer as the mother of it; and therefore it should have been sent with her to the place of her settlement. And it was quashed by the court for that reason. *Sess. C. V. 2. 90.*

But altho' the child may not be separated from the mother, yet if she desert it voluntarily, it seems the cause of nurture then ceases, and that then it may be sent to its place of settlement.

Of legitimate children.

How far
they shall
be settled
where born.

In the case of *Rickmansworth* and *St. Giles's*: A child was ordered to be removed from the parish of *Rickmansworth* to the parish of *St. Giles*, as being the place of his birth, the place of his father's last legal settlement being not known: For where the father's place of last legal settlement of a legitimate child is not known, there the child may be sent to the place of its birth, as well as an illegitimate one. *Black. 246.*

H. 8 Ann. Cripplegate and *St. Saviour's*: A child of three years of age was removed from one of these parishes to the other; and it appeared in the order that they removed him there, because he was born there, not having any other settlement.

ment. By the court: The father's settlement is the settlement of the children when it can be found out; otherwise the birth of the child *primâ facie* is the settlement of the child, until there is another settlement found out. So a bastard child's settlement is its birth, because it is *filius nullius*; so if they cannot find out the settlement of a legal father, the birth is a settlement of the child. If a child be dropt in a parish, they may remove him to the place of his birth, or where his father's settlement was; and the settlement by birth is only *quousque* they find the father's settlement, and if they can never find that, it is absolute upon them. *Foley* 265.

But here it is to be noted, that in the two cases abovementioned the point was not in question, whether or no if the father had no settlement, yet if the *mother* had a settlement, such children should follow the mother's settlement, or should be sent to the place of their birth; and there will appear good opinions in the next course of settlements, that if the father has no settlement, as being a foreigner, or if the father's settlement is not known, yet if the mother hath a settlement, the children in such case shall not be sent to the place of their birth, but to the place of their mother's settlement: But the rule intended to be drawn from these cases, which is sufficient for this place, and which the cases will well bear, is no more than this, that the place of the birth of a legitimate child is the settlement of it until another settlement be found out.

IV. Of the settlement of children with their parents.

The birth of legitimate children doth not give them a settlement, except where the settlement of

Settlement of a legitimate child with the parents.

Poor. (Settlement with the parents.)

their father and mother is not known, and then only 'till it is known. *Foley* 269.

At what
age a child
may gain
settlement
distinct from
the parents.

Formerly it was held, that a child shall continue with its parents as a nurse child, until it shall be eight years of age, during which time it shall not be deemed capable of gaining a settlement in its own right; but by the latter resolution it seems to be agreed, that a legitimate child shall necessarily follow the settlement of its parents as a nurse child, or as part of the family, only until it shall be seven years of age; and that after that age, it shall not be removed as part of the father's family, but with an adjudication of the place of its own last legal settlement, as being deemed capable at that age of having gained a settlement of its own. But it seems not difficult to determine with certainty, at what age a child may have acquired a settlement of its own, distinct from the parents settlement. For by the 5 *Eliz. c. 5. s. 12.* A child of seven years of age may be bound apprentice to a shipwright, fisherman, owner of a ship, or other person using the trade of the seas; and by the vagrant act of the 17 *G. 2.* a vagrant's child of that age may by the justice be put out an apprentice: And so soon as he shall have resided and lodged in a parish for 40 days under the indenture, he will have thereby gained a settlement. So that the exact time when a person may have gained a settlement in his own right is at the age of seven years and 40 days.

Father living.

E. 10 Ann. Queen and St. Giles's. Order to remove an infant to the parish of *St. Giles's*; because it appear'd that tho' the father was settled at another place, yet the child was born at *St. Giles's*. Quashed, by the court; for that the place of the settlement of the child is with the father, and not the place where the child was born. *Seff. C. V. 1. 18.*

H. 10 G. St. Giles's Reading and *Everfly Blackwater*. It was ruled by all the court upon argument, that where a father gains a second settlement, after the birth of his child, that settlement is immediately communicated to the child. And a child may be sent to the place of his father's settlement, without ever having been there before. *Seff. C. V. 2. 112. Str. 580.*

M. 12 G. 2. *Souton and Sidbury*. The question was, whether the children, being above the age of nurture, shall be removed with the father to the father's settlement where the children had never inhabited. By *Lee* chief justice: In the case of *Everfly Blackwater*, the court were of opinion, that a child might be sent to the settlement of his father, tho' it had never been there before, contrary to opinion of lord *Parker* in a former case. And he said, the true distinction, I think, is that where children have gained no settlement, but continue part of their father's family, they shall follow their father's settlement. *Seff. C. V. 2. 150. Andr. 345.*

T. 2 An. *Comner and Milton*. A man settled at *Comner*, and having several children born in that parish, afterwards removed to *Milton* with his children, and gained a settlement there; and becoming very poor, his children born in *Comner*, were, by an order of two justices, sent to *Comner*, viz. those that were under seven years of age; the justices apprehending that the place of their birth was the place of their lawful settlement. And this order being removed into the King's Bench by *certiorari*, it was insisted to maintain the order, that the children had gained a settlement in *Comner* by birth, which was not altered or defeated by any subsequent act of their father in gaining a settlement at *Milton*; for his children were with him there only as nurse children, and his settlement shall not be the settlement of the children.

Door. (Settlement with the parents.)

children. But by *Holt* chief justice: The place where a bastard is born, is the place of his settlement, unless there is some trick to charge the parish; but the place where legitimate children are born, is not the place of their settlement, for let that be where it will, the children are settled where their parents are settled; as for instance, if the father is settled in the parish of *H.* but goes to work in the parish of *B.* and then dies; this child may be sent to the parish of *H.* for it is not the birth, but the settlement of the father that makes the settlement of his child; and if the father hath gained a new settlement for himself, he hath likewise gained a new settlement for his children, who do not go with him to his new settlement as nurse children, but as part of his family. 3 *Salk.* 259.

The cases above cited proceed upon a supposition that the children are part of the father's family; the two following cases are, where the child was no part of the father's family, but had left the father, and afterwards the father acquired a new settlement; and the question was, whether in such case the son (having gained no settlement of his own in the mean time) shall follow the father's new acquired settlement.

T. 7 G. *Eastwoodhay* and *Westwoodhay*. Upon appeal from an order of two justices, for the removal of *Robert Baker* from the parish of *Westwoodhay* to the parish of *Eastwoodhay*, the sessions state the fact specially for the opinion of the court: That 40 years since *Thomas Baker*, the father of this *Robert*, was seised in fee of a freehold estate in the parish of *Hamstead Marshall*, where he lived 'till the year 1697, and had this son *Robert*, who was at that time eight years old: That in 1697, *Thomas* the father, and all his family, removed to *Chevely*, where he rented a tenement of 20 l. a year for two years: That in

1699.

1699, he purchased a copyhold estate of 1 l. a year in the parish of *Westwoodbay*, whither he removed with his son and servants, and served churchwarden and other parish-offices, and paid taxes, and stayed there 'till the year 1716: That in 1716, he purchased a cottage of 1 l. 12 s. 6 d. a year in *Eastwoodbay*, and went and lived upon it 'till his death; but *Robert* the son staid behind in *Westwoodbay*, where he married a wife, and has worked ever since on his own account, and that he is 30 years old. Upon the whole, the sessions confirm the order of the two justices for his settlement at *Eastwoodbay*. It was moved to quash the order of sessions, for that the settlement of *Robert* the son is either at *Hampstead Marshall*, where he was born, and where he lived 'till eight years old; or if it should be carried so far, as that he gained a new settlement with the father, by removing with him as part of his family, according to the case of *Comner* and *Milton*, yet that can carry him no farther than *Westwoodbay*, which is the last place to which he accompanied his father: But let the settlement be in either, it is not material now; the only question being, whether here is any settlement in *Eastwoodbay*, for which there is no colour. On the other hand it was insisted, that let the son be of what age he will, he shall follow the settlement of the father, 'till he gains one by his own acquisition; and it appearing that he had never done any thing to gain a settlement by act of his own, either in *Hampstead Marshall*, *Cheveley* or *Westwoodbay*, then he must follow the settlement of the father as well in *Eastwoodbay* as in any of the rest. *Pratt* chief justice: The question is not, where this man and his family are settled, but whether there appears a settlement of him in *Eastwoodbay*. If he had gone thither with his father, as part of the family; possibly it might have been a settlement

Poor. (Settlement with the parents.)

of him there; but by staying behind, he was divided from his father, and therefore there is no colour to make it a settlement in *Eastwoodbay*. I think his settlement is in *Westwoodbay*, which was the last place where he lived as part of the father's family. To which the rest of the court agreed: And the order was quashed. *Str.* 438.

E. 2 G. 2. St. Michael's Norwich and St. Matthew's Ipswich. Two justices made an order to remove *Edmund Williams*, *Anne* his wife, and *Edmund*, *Solomon*, and *Amy*, children of the said *Edmund* the father, from the parish of *St. Michael* in *Norwich* to the parish of *St. Matthew* in *Ipswich*. Upon an appeal from this order, the sessions stated the matter specially, *viz.* that *Edmund Williams* the elder, father of *Edmund Williams*, the father of the said children, was settled at *Shipton Mallet* in *Somersetshire*; and afterwards removed to *Burton* in the said county, and had a writing given him from *Shipton Mallet*, acknowledging his legal settlement to be there; by virtue of which he continued at *Bruton* for 20 years, where *Edmund* the son was born; and that he continued there with his father 'till he was 19 years of age, and was bred up to his father's business of a woolcomber: Then *Edmund* the son left his father, and came to *Norwich*, and there he married two wives; by the first he had *Edmund* the grandson; and ten years after his wife died. Then he married *Anne* his now wife, by whom he had *Solomon* and *Amy*, two other children; since whose birth about two years ago, *Edmund Williams* the grandfather gained a new settlement at *St. Matthew's Ipswich*: But *Edmund* the son hath never lived with his father at *Ipswich*, or any where else since he lived with him at *Bruton*. The question was, whether the persons removed, to wit, *Edmund* the second, his wife and three children, should follow the settlement

ment of the grandfather at *Ipswich*, or whether they should not be looked upon as separated from the grandfather's family, especially after so long an interval of time? Mr. J. *Reynolds*, I do not see how the father can gain a settlement for the son, so many years after the son has left him. Lord chief justice *Raymond*, I think it is odd that an old man of sixty, who has left his father for 40 years, shall follow the settlement of his father, as oft as his father removes. In the case of young children it is otherwise; for they cannot be severed from their parents because of nurture. And by the whole court: The reason why we inquire into the ages of children is, because if they are grown up, and above seven years old, they may gain a settlement by their own act; but it is almost a contradiction in terms to say, that a man who has left his father 40 years shall follow the settlement of his father. *Seff. C. V. 2. 129. Str. 831.*

4 H. 10 G. *St. Giles's and Eversley Blackwater.* Father dead, Tho' the place of the birth of a child, where the father hath no settlement, is the place of the settlement of the child; yet where the father hath gained a settlement, his children, tho' born in another parish, shall be looked on as settled at the place of their father's last legal settlement, and shall be removed thither, as well after the death of their father, if occasion requires, as in his life time, supposing they have gained no settlement of their own. *L. Raym. 1332. Str. 580.*

T. 8 W. *King and Luckington.* Howel and his wife were settled at *Luckington*, and came to *St. Austin's*, and there a child was born. The father dies in the king's service. The question was, who shall keep the child? It was objected, that it was settled where born; for that they could not send it to the father, when he was dead. But

1000. (Settlement with the parents.)

by *Holt* chief justice: The death of the father doth not alter the child's settlement. *Comb.* 380.

Father dead,
and the mother a widow.

5 M. 1 G. St. George's and St. Catherine's.
A man settled in *St. Catherine's*, married, and had six children born there, and died. After his death the widow goes into the parish of *St. George* with her six children, and rents a house of 12 l. a year, and lives in it with her children four months. The question was, whether the children should be settled where their father was last settled, or have a settlement with their mother in the parish of *St. George*; and the whole court were of opinion, that the six children were settled in the parish of *St. George*, where the mother's last settlement was. And by *Parker* chief justice, there is no distinction between the settlement of children with the father or mother, for they are as much hers as the father's, and nature obliges her, as much as the father, to provide for them; so does the law; and every argument that holds for their settlement with the father, holds as to their settlement with the mother. The reason why children shall not gain a settlement, where the widow gains a settlement only by intermarriage, is, because it is then not her family, but her husband's; and she cannot give the children any sustenance without the husband's leave. But in this case, since she is equally punishable with her husband for deserting her children, and therefore could not leave them behind her, they must gain a settlement with her. *Foley* 254. *Seff. C. V.* 1. 69.

H. 13 G. Woodend and Paulespury. *John Buncher* was settled at *Woodend*, and died, leaving a widow and one daughter of the age of 14 years. The widow removed to *Paulespury* into a messuage and tenement of her own for life, and took her daughter with her, and the daughter lived with her there two years. And the question was, whether

whether the daughter gained a settlement at *Paulespury*? And it was adjudged that she did; because the mother being a widow, having gained a new settlement after her husband's death, the daughter gained a settlement also as part of her family. And there is no difference between a father's gaining a settlement and a mother's, in such a case as this; for the mother is obliged to provide for her children, after her husband's death, as the father was when living; and she could not leave this daughter behind her, neither could she be removed from her. *L. Raym.* 1473. *Fol.* 256. *Str.* 746.

H. 13 G. Woodend and Paulespury. If after the husband's death, the wife shall marry again, to a man settled in another parish; her children by her former husband must go with her for nurture, yet they are no part of her second husband's family; and therefore gain no settlement thereby in the parish where the father-in-law is settled. *L. Raym.* 1473. Father dead, and the mother married again.

E. 8 G. 2. King and St. Mary Berkhamstead. The father ran away, and the mother went and resided on an estate devised to her: The question was, whether the children could gain a settlement by residing with the mother on such estate, where the father had never lived? By *Hardwick* chief justice: As it doth not appear that the father is dead, we must suppose him to be living; and in such case the children could gain no settlement but what is derived from the father. *Self. C. V.* 2. 182. Father ran away, whether the child can gain a settlement with the mother.

H. 12 G. King and Westerham. An Englishman, whose settlement was not known, married, had a child, and ran away: The child was then nine years of age. By the court: The child ought to be settled, where the mother was settled before marriage. *Foley* 252. Father having no settlement, whether the child shall be settled with the mother.

Poor. (Settlement by apprenticeship.)

H. 10 G. St. Giles's and Eversley Blackwater.
It was held by the court that where the father's settlement cannot be found, yet if the mother's can, the child shall have the benefit of that. *Seff. C. V. 2. 112.*

Father and mother both dead, and the child's settlement not known.

A travelling woman having a small sucking child upon her was apprehended for felony, and sent to the gaol, and was hang'd: The child is to be sent to the place of its birth, if it can be known; otherwise it must be sent to the town where the mother was apprehended, because that town ought not to have sent the child to gaol, being no malefactor. *Read. Poor, Dalt. 168.*

And where a child is first known to be, that parish must provide for it 'till they find another. *Comb. 364, 372.*

V. Of settlement by apprenticeship.

Statutes concerning the settlement of apprentices.

By the 13 & 14 C. 2. c. 12. On complaint by the churchwardens or overseers within 40 days after any person shall come to settle in any parish, on any tenement under 10 *l.* a year; two justices, (1 *Q.*) may remove him to the place where he was last legally settled, either as a native, householder, sojourner, apprentice or servant, for the space of 40 days at the least. By the 17. c. 17. The said 40 days shall be reckoned, not from the time of his coming to inhabit, but from the time of his delivering notice in writing. And by the 3 W. c. 11. Not from the time of delivering such notice, but from the time of the publication of such notice in the church.

But by the said act of the 3 W. If any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement, tho' no such notice in writing be delivered and published. *s. 8.*

By

Poor. (Settlement by apprenticeship.)

85

By the 12 *An. st.* 1. c. 18. If any person after June 24, 1713, shall be an apprentice, bound by indenture to any person residing under a certificate in any parish, township or place, and not afterwards having gained a legal settlement in such parish, township or place, such apprentice, by virtue of such apprenticeship, indenture or binding, shall not gain any settlement in such parish, township or place; but every such apprentice shall have his settlement in such parish, township or place, as if he had not been bound apprentice.

f. 2. *Who shall be liable to settle*

And by the 9 & 10 *W. c.* 11. No person who shall come into any parish by a certificate, shall be adjudged by any act whatsoever to gain a settlement in such parish, unless he shall *bona fide* take a tenement of 10 *l.* a year, or execute an annual office in such parish, (and consequently not by apprenticeship.)

And by the 8 *An. c.* 9. and 9 *An. c.* 21. The master shall pay duty of 6 *d.* a pound for 50 *l.* or under, and of 12 *d.* a pound for every pound above, of money, or of things not money, according to their value, given with apprentices, and proportionably for greater or lesser sums: Except money given with parish apprentices, or out of publick charities. The sum given to be written in the indenture in words at length. And besides the stamps before requisite, the indentures to be moreover stamped with another stamp, denoting the 6 *d.* or 12 *d.* a pound respectively. And if the sums are not truly inserted, or duties not paid or tendered, or indentures not stamped, or tendered to be stamped within the times limited; such indentures shall be void, and not available in any court or place, or to any purpose whatsoever.

On complaint within 40 days] The statute of C. 2. gives power to remove persons within the space of 40 days after they come to reside, but no power to remove them after the said 40 days; and being unremoveable and legally settled is the same thing. The statutes of J. 2. and W. 3. do restrain such 40 days residence to be after notice in writing; but the latter clause of the statute of W. takes off that restriction with regard to apprentices; and the reason thereof is, because such notice would be to no purpose, for that the justices cannot upon the complaint of the overseers remove the apprentice from his master, that is to say, they cannot upon complaint of the overseers make void the indenture between the master and his apprentice, by which the apprentice is bound to live with his master, and the master is bound to keep him; for this can only be done upon the complaint of the master or apprentice; and continuing 40 days unremoveable without notice, is the same thing as continuing 40 days removeable, but not removed, after notice, and consequently the party hath gained a settlement. And it is possible that the apprentice may gain as many settlements as there are spaces of 40 days in the term of his apprenticeship; and where he serves the last 40 days, there is his last settlement: Consequently he may gain a settlement long before his master shall gain one; as where his master's settlement shall arise from executing an annual office; or he may gain a settlement, whilst his master shall gain none, as when he resides upon a tenement under 10*l.* a year. And of consequence, the master may be removed when the apprentice cannot be removed; and in such case the master shall be obliged to apply to the justices, to compel the apprentice to go along with him.

H. 4 An. St. Bride's and St. Saviour's. A woman who was settled at *St. Saviour's* with her apprentice by indenture, came and took a lodging in *St. Bride's* and there continued above 40 days with her apprentice, who served her there. This was held by the court to be a settlement of the apprentice at *St. Bride's*. 2 *Salk.* 533.

M. 8 G. 2. King and St. George Hanover Square. *Alice Wheeler* was bound by indenture a parish apprentice to *George Lister* in the parish of *St. George*, where she lived above 40 days under the indenture, and gained a settlement: Afterwards she was by parol agreement hired out by the said master to one *Hale* in the parish of *St. Mary le bone*, and there lived and lodged above 40 days, that is for the space of one year and upwards, the said apprenticeship continuing; and the said *George Lister* her master received her wages, and found her cloaths. By the court: The apprentice is well settled in *St. Mary le bone*. *Seff. C. V. 2. 138. Str. 1001.*

E. 10 G. Buckingham and Shepton Bechamp. The master ran away, the apprentice hired himself for a year, and served the year. By the court: He gained no settlement, not being *sui juris*, nor of a capacity to hire himself; otherwise had it been by consent of his master, or had his indenture been cancelled. *Cases of S. 155. L. Raym. 1352. Str. 582.*

The son was bound apprentice to his father, who afterwards gave up the indentures of apprenticeship, but did not cancel them: Then the son was hired into another parish for a year, and served the year, and being likely to be chargeable, he was sent by an order to the parish where he lived as an apprentice; because the indentures not being cancelled, he still continued an apprentice there. *Mod. Ca. 190. Dalt. 180.*

Apprentice
assign'd by
the master.

E. 9 G. St. Olave and All-hallows. If a master assigns over his apprentice, and the apprentice serves in pursuance of that assignment, he thereby gains a settlement; and it differs not whether he serves with one master or another, for he still serves by virtue of the first indenture. *Sess. C. V. 1. 215.*

Binding for
four years.

Shall be bound apprentice] *H. 9 G. 2. King and St. Nicholas Ipswich.* There was an indenture of apprenticeship for four years; which the apprentice served accordingly: Whereas the statute of the 5 *El.* requires, that it shall not be for less than seven years. And the question was, whether this should gain a settlement? By the whole court: This indenture was not void but only voidable; and none could avoid it but the parties: And neither of the parties having taken advantage thereof to avoid it, the apprentice having continued under the same above 40 days, did thereby gain a settlement. *Sess. C. V. 2. 162. Andr. 365. Str. 1066.*

Binding by
indenture
not indent-
ed.

By indenture] *T. 5 & 6 G. 2. King and Mel-
lingham.* A person was bound by indenture, tho' not actually indented; and the sessions adjudged the settlement on the foot of that binding. Exception was taken, that this was a binding without indenture, and not good; and also whatever the writing was, the pauper was no party to it, nor could be concluded by it; and a deed-poll will not bind an infant, nor a poor person put out by the overseers without his own contracting, for the statutes, which make such covenant binding upon them, do require that the binding be by indenture. And by the court: The exception must be allowed. And the order quashed. *Sess. C. V. L. 330.*

Not available in any court or place, or to any purpose whatsoever.] H. 4 G. 2. Cureden and Leiland. Upon a special order of settlement it was stated, that a poor boy was bound out apprentice by indenture, and the master had 20 s. paid him, that he served three years; but that the master never paid the duty of 6 d. in the pound, according to the 8 An. c. 9. s. 39. which says, that if the duty be not paid, the indenture shall be void. The case was referred to *Fortescue* (justice, who went the circuit) and he held it a settlement, because the master had six months to pay the duty in; so that during those six months a settlement was gained: And it should not be in the power of the master to defeat it by matter *ex post facto*. And pursuant to this opinion the sessions held it a settlement. But upon debate in the *King's Bench* the order was quashed: For they said it was making the indenture good to one purpose, when the act of parliament has made it void to all intents and purposes. And tho' it was a hard case, they could not break thro' the positive words of the act. *Str.* 903. *Sess. C. V.* 2. 134. *Andr.* 364.

VI. Of settlement by service.

By the 13 & 14 C. 2. c. 12. On complaint by the churchwardens or overseers within 40 days after any person shall come to settle on any tenement under 10 l. a year, two justices (one Quorum) may remove him to the place where he was last legally settled, either as a native, householder, sojourner, apprentice or servant, for the space of 40 days at the least.

Statutes concerning settlement by service.

But by the 1 J. 2. c. 17. The 40 days continuance shall not make a settlement but from the time of delivering notice in writing.

And by the 3 W. c. 11. From the publication of such notice in the church.

But

Poor. (Settlement by service.)

But by another clause in the said act of the 3 W. If any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement therein, tho' no such notice in writing be delivered and published.

And by the 8 & 9 W. c. 30. Whereas some doubts have arisen touching the settlement of unmarried persons not having child or children, lawfully hired into any parish or town for one year, it is enacted and declared, that no such person so hired as aforesaid, shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year.

By the 12 An. st. 1. c. 18. If any person after June 24, 1713. shall be a hired servant with any person, who did come into, or shall reside in any parish, township or place, by means or licence of a certificate, and not afterwards having gained a legal settlement in such parish, township or place, such servant shall not gain any settlement in such parish, township or place, by reason of such hiring or service, but shall have his settlement as if he had not been an hired servant to such person. s. 2.

And by the 9 & 10 W. c. 11. No person who shall come into any parish by a certificate shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he shall bona fide take a lease of a tenement of 10l. a year, or shall execute an annual office in such parish, (and consequently shall gain no settlement by service.)

General exposition of hiring and service.

On complaint within 40 days] By the statute of C. 2. persons became settled, if not removed in 40 days. But whereas people came privately into parishes, and continued perhaps 40 days before they were publickly known to be there, therefore the

the statute of the 1 J. 2. did provide, that such 40 days should not gain a settlement, but after the time of delivering notice in writing to the overseers, that such person was come to inhabit in such parish. And whereas in that case, the overseer, to whom such notice should be delivered, either through ignorance or wilfulness might conceal such notice from the inhabitants; therefore the 3 W. did provide, that such 40 days should be accounted from the time of the publication of such notice in the church, and not otherwise. But then by the subsequent clause of the statute of the 3 W. it is enacted, *that if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged a good settlement therein, tho' no such notice in writing be delivered and published.* And the reason thereof is this, because that such notice would not avail; for that the justices, upon complaint of the overseers, who are no parties to the contract, cannot make void the contract between the master and servant, by which the servant is bound to continue with his master if he requires it: And therefore upon this act, if the servant was hired for a year, and served 40 days under that hiring, he was not removeable, and gained a settlement; and so in every place where he served 40 days under such hiring, he there gained a settlement; and where he served the last 40 days, there was his last settlement: But this easy method of gaining settlements causing servants to grow insolent, at last the statute of 8 & 9 W. was made, which enacts, *that no such person so lawfully hired into any parish or township shall be adjudged to have a good settlement there, unless he shall continue in the same service during the space of one whole year.* But if he shall continue in such service during the space of one whole year, his settlement in all other respects shall be as before;

Poor. (Settlement by service.)

before; that is to say, every continuance of 40 days unremoveable during such service for the year shall be deemed a settlement; and where he continues the last 40 days, there is his last settlement.

Unmarried
person ha-
ving a child
settled else-
where,

E. 10 An. Antony and Cardigan. A man having a daughter, which daughter was married and settled elsewhere, hired himself for a year, and served the year. By the court: He is a single person within the meaning of the act, tho' not expressly within the letter of it. And they held, that the man, notwithstanding he had a child, gained a settlement by virtue of that service. *Cases of S. 7. Foley 131.*

Servant
marrying
during the
service.

E. 1 An. Faringdon and Witty. A servant hired for a year, served half a year of the time, and married. The question was, whether the justices, on complaint of the overseers, could make an order to remove him to the place of his last legal settlement? By the court: The contract between the master and servant was not dissolved by the marriage; and admitting it might be dissolved by an order made on complaint of the master, yet without that and upon complaint of the officers only it could not be dissolved. And the marriage doth not hinder the service; the contract continues; and if the man performs his service, he gains a settlement. *2 Salk. 527.*

The same resolved, *M. 1 G. 2. King and Sutton. Sess. C. V. 2. 121.*

Whether
the hiring
for a year
shall be by
one intire
contract.

H. 10 W. Bayly's case. A maid servant contracted to serve from *Lady-day* 'till *Michaelmas* following; which she did accordingly: And then made a new contract with the same master to serve him for a longer time, and accordingly did serve him upon that contract 'till *April* following, in all above a year. And by the court: Tho' this was not an intire contract, yet it gained her a settlement. *3 Salk. 257.*

M. 1

M. 1 G. *Peperharow and Frensham*. A person is hired the third of *October* to serve 'till *Michaelmas* following, and at *Michaelmas* the master says, stay two or three days, and I will pay you. Adjudged a settlement, because fraudulent; and if this was allowed, there would be no such thing as a settlement, for every person would hire a servant two or three days after the quarter-day, purely to evade the statute. *Cases of S. 80. Lu. Ca. in L. & E. 293.*

Hiring for two or three days short.

T. 13 An. *Jessop and Missenden*. *Sarah Barnes* lived with her father for a year as a hired servant, in a little cottage upon the waste for 10 s. a year, besides what she could get by her service and labour. And whether she gained a settlement thereby, was the question. And the whole court held she did; there is no ground of fraud, for it was to live with her father, who might be grown old. *Foley 142.*

Hiring with one's father.

T. 6 G. 2. *Lidney and Stroud*. Upon a special order of sessions it was stated, that a maid was hired for a quarter of a year, and if she and her master liked one another, she was to continue the whole year, and have three pounds for her year's wages; that she staid the year out, and had her three pounds. And this on debate, was held to be a settlement. *Str. 950.*

Hiring conditionally.

Mich. 13 G. A young woman lived with her grandmother for four years on an allowance of meat, drink, washing and lodging. But there appearing no contract between the grandmother and the girl, but that she might have left the grandmother at any time, it was adjudged not a hiring within the statute. *Sess. C. V. 2. 120.*

Service where no contract did appear.

E. 4 G. *Ivingoe and Solebury*. A person was hired for a year to one *Knight*, who rented a farm in *Ivingoe*, and lived with him half a year: The master lets the farm to one *Smith*, and the servant lives the residue of the year with *Smith* in the farm,

Same service but not with the same master.

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farm, without any words passed about dissolving the contract with *Knight*, or making any new contract with *Smith*. And at the end of the year, the second master paid him his wages. The question was, if this shall be deemed the *same service* so as to gain a settlement. By *Pratt* chief justice and the court: This is a good settlement; if a master command his servant to live with another for a certain time, it is a service to the first master, and here being no new contract, it is carrying on the service of the first master. And the subsequent master paying his wages, did not alter the case; for the contract not being destroyed, he might have brought an action against the first master. *Seff. C. V. 1. 121. Cas. of S. 109. Str. 90.*

Same service, but not in the same place.

E. 11 G. King and White-chapel. A person was hired for five years to work at a glass-house in *White-chapel* at the rate of 10*s.* a week, but never lodged with his master in the house any part of the time, but at another house in the parish: By the court: He has gained a settlement there, for being hired to serve above a year, and having served and resided in the same parish pursuant to such hiring, he hath fully complied with the statute; and it is not material where he lodged, so that it were within the same parish. *Seff. C. V. 2. 114. Foley 146.*

T. 8 G. St. Peter's in Oxford and Chipping Wycombe. Upon a special order of sessions it appeared, that the master of the *Oxford* stage coaches hired a servant for a year to stay in an inn in *Wycombe*, where the coach baited, and to take care of the horses; he lived there for the whole year, and the master all the while lived in *Oxford*. The question was, where that servant gains a settlement, or whether any by that service. And by the whole court: He gained a settlement in *Chipping*

ping Wycombe, though his master never lived there.
Str. 528. *Foley* 200.

30 G. 2. *King and Alton*. The question was, whether a servant residing for 40 days with his master at *Scarborough*, who went thither for his health or diversion during the season of publick concourse there, shall be deemed thereby to gain a settlement. And it was determined that he shall not.

E. 4 Geo. 2. *Goring and Moleworth*. A person was hired for the year, and served the year. The person to whom he was hired, lived at *Goring*, and kept a boat, which navigated from *Goring* to *London*, but the servant was not 40 days in the whole year at the parish of *Goring*, but served out the year on board the boat. By the court: This was no settlement at *Goring*. *Sess. C. V. 1.*
327. *Caf. of S. 219.*

M. 1 G. *Powlet and Burnham*. A person was a covenant servant for a year, but went away three weeks before his year was out, by his own and his master's consent, and was abated 6s. of his year's wages for it. It was objected, that being a covenant servant, this doth import that it was by deed, and then the consent cannot discharge the covenant. By the court: Here is no fraud expressed or implied. It is not within the words of the act, nor the meaning. Can a man compel his servant to gain a settlement *nolens volens*? As to the covenant being by deed, and so the service continuing, perhaps he might bring an action on the covenant, and as to that point the service continued; but not as to gain a settlement where the statute saith, he must serve for a year, which is not in this case. *Caf. of S. 84. Foley 187. Sess. C. V. 1. 71.*

Same service within three weeks by a covenant servant.

M. 9 G. 2. *Seaford and Castle-chureb*. On a special order of sessions it was stated, that a person was hired for a year, which he served 'till the last

Same service within 12 days.

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last 12 days, when he went away without the master's leave, and staid 'till after the year was up, when he returned for his cloaths, and was paid the whole year's wages. And on consideration, That if they once allowed this absence for 12 days at the end of the year, (which differed from an absence in the middle of the year, which was purged by taking him again,) they should not know where to stop, it was determined that he gained no settlement. *Str.* 1022.

Same service within
a few days.

E. 7 G. King and Iffip. A person is hired for a year: And in the year's service his master gives him leave to go and see his mother for one day, and he tarried three days, and then came home again, and his master took him into his service as before. It was objected, that his staying to see his mother without leave was a desertion of the service, and the time he staid away takes so much off from a compleat service of the year. But by the court: This will not prevent a settlement; for the master's taking him again is a purgation of the offence, and no interruption of his service. *Caf. of S.* 129. *Str.* 423.

In the same case there was this circumstance: The servant, three or four days before his service expired, desired leave of his master to go to a fair to hire himself into another service. His master refused, and told him if he went he should not come into his house again. The servant went notwithstanding, and did not return until the time of his service was expired. By the court: This is nevertheless a good settlement, and the law will not suffer a master to shew himself so inhuman to his servant. A master cannot turn off his servant two or three days before the year expires, if he does, the service in point of law continues, and he gains a settlement notwithstanding. *Caf. of S.* 129. *Str.* 423.

M. 19 G. 2. *Crocombe* and *St. Cutbbert's*. A Same service continued beyond the year.
 servant was hired for and served a year in *Crocombe*. He continued to serve on there without any new agreement for a quarter of a year, when the master removed into a house in *St. Cutbbert's*, where the servant continued with him for half a year longer. The question was, whether this was a settlement in *St. Cutbbert's*, within the reason of those cases that have held the settlement to be gained where the last 40 days service was? And the court held it a settlement there, for it is still a continuing in the same service within the meaning of the 8 & 9 W. c. 30. tho' there is no new agreement. And upon the whole, there has been between this master and servant a hiring and service for above a year. *Str.* 1240.

Unless he shall take a tenement of 10 l. a year, or execute an annual office] E. 15 G. 2. K. and *Sherborne*. A certificate man has a son born in the parish to which he was certified, who when 16 years old hires himself a servant to a button-maker in the same parish, and serves a year. And upon considering the words of the statute, which declare that no person who comes in by certificate shall be adjudged to gain a settlement by any act whatsoever, except he takes 10 l. a year, or executes an annual office — The court held, that the son of a certificate man was equally within it, and that therefore the hiring and service in this case gave him no settlement. *Str.* 1165. Whether a certificate person can gain a settlement by service.

VII. Of settlement by marriage.

Heretofore it hath been somewhat doubtful what shall be deemed a sufficient marriage, so as that a woman shall gain a settlement thereby, and the courts have been favourable in admitting marriages, altho' not strictly solemnized according to
 What shall be deemed a sufficient marriage so as to gain a settlement.
 F the

§ 1002. (Settlement by marriage.)

the rules of the church; but now by the statute of the 26 *Geo. 2. c. 33.* a great distinction is made between marriages solemnized before the 25th day of *March 1754*, and after that time: For by the said statute it is enacted, that after *March 25, 1754.* all marriages (except in *Scotland*, and except the marriages of Jews and Quakers, where both the parties are Jews or Quakers respectively,) which shall be solemnized without licence or publication of banns, or in any other place than a church or publick chapel, (unless by special licence from the archbishop of *Canterbury*) or without the consent of parents or guardians, (where either of the parties not being a widower or widow is under the age of 21,) shall be null and void to all intents and purposes whatsoever. And these requisites must appear from the entry thereof in the register-book for that purpose.

Wife shall follow the husband's settlement.

'Tis a general rule that a woman marrying a husband who hath a known settlement shall follow the husband's settlement: And altho' in the case of *Uppotterce and Dunsfwell, M. 1 G.* it was held, that the wife shall not gain a settlement with the husband, until she hath lived with him 40 days unremoveable as part of his family; yet afterwards in the case of *K. and Pinceborton, M. 3 G.* It was agreed by the court, that a wife is to be sent to her husband's settlement, tho' she never lived with him there. And in the case of *St. Giles's and Eversley Blackwater, H. 10 G.* The widow was removed to the deceased husband's settlement, tho' she had never been there; and it was ruled by all the court that the removal was good, and that she must be sent to the last legal settlement of her husband, having acquired no other settlement since his death. *Cas. of S. 89. Sess. C. V. 1. 80, 105. V. 2. 112.*

It is also agreed that a wife can gain no settlement separate and distinct from her husband, during the coverture. Wife can gain no settlement without her husband.

It seems also to be agreed, that a woman marrying a husband that hath no known settlement, doth not lose her former settlement which she had before marriage. But the great difference is this, whether such settlement continues to her during the coverture, or is suspended during the coverture, and only revives after the husband's death; which difference includes in it this question, whether the parish where the woman was last legally settled before marriage shall by barely proving such marriage avoid the settlement with them during the husband's life, or whether, in order to avoid such settlement, it is not also necessary for them to prove that such woman hath gained another settlement, that is to say, that the husband hath a settlement, and where, in relation to which case, where the husband hath no known settlement, it hath been adjudged as follows:

E. 2 G. St. Giles's and St. Margaret's. A woman marries a foreigner, and her husband dies. By the court: She must be sent to the place of her settlement before marriage. *Sess. C. V. 1. 97.*

M. 1 G. Uppoterce and Dunswell. A woman is settled in *Dunswell*, and afterwards marries a vagrant, whose settlement does not appear. But he goes and lives in *Uppoterce*, and dies there. Two justices remove the widow to *Dunswell*, where she was settled before marriage. And by the court: Where it appears that the husband in his life-time had no legal settlement as can be found, there the marriage shall not put her in a worse condition than she was before, and is all one as the case of a Scotchman and foreigner, and she shall not lose her former settlement. *Cas. of S. 89. Sess. C. V. 1. 86.*

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Hitherto the cases seem to be agreed, being that the husband is dead. But the difficulty is where the husband is supposed to be living; and in relation to this point, the following cases have been adjudged.

M. 12 An. Dunsford and Wilborough Green.

A woman who was settled at *Wilborough*, marries a *Scotchman* who had no settlement in *England*. Two justices remove her from *Dunsford* to *Wilborough*, the place of her settlement before marriage. Exception; this is a married woman, and by her marriage she ought to be settled where her husband was; and this cannot be right, for if the justices may send away a wife, it is making a divorce between husband and wife; and if he is a *Scotchman*, they ought to send her as part of his family to the bordering counties of *Scotland*, according to the act of the 39 *El. c. 4. s. 6*. The court held, tho' she was a married woman, yet if her husband had no settlement, she could not gain any other settlement than she had before marriage. And as for divorce it was none; for the husband might come to her as well at *Wilborough Green* as at *Dunsford*. *Fol. 249. Cas. of S. 31.*

Note; The act of the 39 *El.* only says, that the *Scotchman* himself, if a vagrant, may be so sent; but says nothing of his family.

M. 3 G. St. Giles's and St. Margaret's. A woman was settled at *St. Giles's* and marries an *Irishman*. By the court: The marriage will not put her in a worse condition than she was before; and they held, that she continued her settlement notwithstanding her marriage. *Cas. of S. 98.*

Marriage
fraudulently
procured.

Altho' it is generally true, that no settlement shall be good which is brought about by fraud; yet it seems that the rule fails in this case, and that if the marriage take effect, the settlement is

good;

good; for the two following cases proceed upon such supposition.

M. 11 G. The overseers were indicted for a conspiracy in giving a small sum of money to a poor man of another parish for marrying a poor lame woman of their own parish, and so by this contrivance to settle the woman in the other parish where her husband was settled. By the court: If there is a conspiracy to let lands of 10 l. a year to a poor man in order to gain him a settlement; or to make a certificate-man a parish-officer, or to send a woman big of a bastard child into another parish to be delivered there, and so to charge the parish with the child, these are certainly crimes indictable. But this indictment was quashed, for want of averment that the woman was last legally settled in the parish relieved by her marriage. *Nels. Conspir. Sess. C. V. 1. 265.*

H. 6 G. 2. K. and Parkins. A single woman of Studley big with child of a bastard was sent back to Studley. Parkins, overseer of Studley, threatened with all the severity of the law to force her to marry a stranger of another parish against both his and her consent, he giving five guineas to the husband, and keeping him in liquor. By the court: Shew cause why information should not go. *Sess. C. V. 1. 176.*

There is another case concerning the husband's Settlement of the husband with the wife, which is when a Scotchman or Irishman, or any other foreigner, shall marry an English woman having an estate, and shall reside with her upon the same 40 days unremoveable. The question, how far this shall gain him a settlement depends upon what hath been said before, concerning the settlement of foreigners in the beginning of this treatise concerning settlements.

VIII. Of settlement by continuing 40 days after notice.

By the 13 & 14 C. 2. c. 12. On complaint within 40 days after any person shall come to settle in any tenement under 10 l. a year, two justices may remove him to the place where he was last legally settled for 40 days.

But by the 1 J. 2. c. 17. The 40 days continuance of such person in a parish intended by the said act to make a settlement, shall be accounted from the time of his delivering notice in writing of the house of his abode, and the number of his family, if he have any, to one of the churchwardens or overseers of the parish to which he shall remove. s. 3.

And by the 3 W. c. 11. The said 40 days continuance of such person in a parish or town, intended by the said acts to make a settlement, shall be accounted from the publication of a notice in writing, which he shall deliver of the house of his abode, and the number of his family, if he have any, to a churchwarden or overseer; which said notice in writing the said churchwarden or overseer shall read, or cause to be read, publickly immediately after divine service in the church or chapel, on the next Lord's day when there shall be divine service in the same. And the said churchwarden or overseer shall register, or cause to be registered, the said notice in writing in the book kept for the poor's accounts. s. 3.

And if any churchwarden or overseer shall refuse or neglect to read, or cause to be read, such notice in writing as aforesaid, he shall (on proof thereof by the oath of two witnesses before one justice) forfeit for every offence 40 s. to the party grieved, by distress and sale, by warrant directed to the constable of the parish or town where the offender dwells; and for want of sufficient distress, the

the said justice shall commit him to the common gaol for one month. And if any churchwarden or overseer shall refuse or neglect to register, or cause to be registered, such notice in writing; he shall on the like occasion forfeit 40 s. to the use of the poor of the parish or town where the offender dwells, to be levied as aforesaid; and for want of sufficient distress, then the said justice shall commit him as aforesaid for the time aforesaid. s. 5.

After any person shall come to settle.] But no soldier, seaman, shipwright, or other artificer or workman in his majesty's service, shall have any settlement in any parish, port, town, or other town, by delivering and publication of notice in writing, unless the same be after a dismissal out of the service. s. 4.

In any tenement under 10 l. a year.] This hath been always understood of persons coming to settle upon such tenement as farmers thereof, and not where the same is their own proper estate; and therefore a man's coming to settle upon his own estate is not within the act.

Where he was last legally settled for 40 days.] H. 10 G. Case of Cirencester. It was held, that living 40 days successively was not necessary; and Mr. J. Fortescue said, that living 40 days off and on, is making the case stronger than living 40 days together in a parish. *Seff. C. V. 2. 40.*

And H. 12 G. 2. *Souton and Sidbury.* It was admitted by the counsel, and held by the court as a point indisputable, that it is not necessary upon this statute that the inhabitancy shall be for 40 days successively. *Andr. 345.*

Notice in writing.] But persons executing a publick annual office, or paying parish rates, or being servants for a year, or apprentices by indenture, shall thereby be settled without notice in

Proof. (Settlement by notice.)

writing. 3 W. c. 11. s. 6, 7, 8. And in general all persons not removeable may become settled without giving notice; for the notice is only intended where the person is removeable, and if he is not removeable, the notice is absurd, and to no purpose; for continuing 40 days unremoveable without notice, and continuing 40 days removeable, but not removed after notice given, do equally gain a settlement.

Publication of the notice.] H. 8 W. Talbury and Foston. A person exercised the trade of a blacksmith; was publickly employed by the parishioners, by the bailiff of the lord of the manor, the vicar and the justice. The question was, whether this publick way of living was not equal to notice in writing, which was only designed to prevent clandestine entries and living. By the court: This might perhaps have satisfied the statute of 1 J. 2. But the 3 W. hath particularized the notice, and what shall be equal to it, and what not; but this is not among the particulars of the statute, and therefore is not such notice as the law requires. 2 Salk. 476. Foley 114.

IX. Of settlement by paying parish rates.

By the 13 & 14 C. 2. c. 12. 40 days inhabitancy shall gain a settlement. By the 1 J. 2. c. 17. Such 40 days are to be reckoned from the delivering of notice in writing. And by the 3 W. c. 11. from the publication of such notice in the church.

But if any person who shall come to inhabit in any town or parish shall be charged with and pay his share towards the publick taxes or levies of the said town or parish, he shall be adjudged to have a legal settlement in the same tho' no such notice in writing be delivered and published. 3 W. c. 11. s. 6.

But

But by the 9 & 10 W. c. 11. *Persons residing under a certificate shall gain no settlement by being rated to and paying any such levies, taxes or assessments.*

If any person.] M. 13 G. Solontongham and Worpleston. The landlord was rated to the poor, for the tenement as being in his hands; and the tenant doth not gain a settlement unless he be both rated and pay. *Foley 128. Sess. C. V. 2. 122.*

And this kind of practice may be sometimes on purpose to avoid a settlement. But it lies in the power of the justices to adjudge, whether or no it shall be deemed a fraud.

E. 4 G. 2. Kinfare and Kingswinford. A person rented a tenement, and paid all parochial taxes for the same in his own right, but was not rated in the parish-books; but the name of *Richard Cotes* that rented the tenement before was kept in the levy books. By the court: This was no settlement, because he was not assessed, as well as paid. *Fol. 120.*

H. 8 W. St. Mary le More and Heavy-tree. The rates were charged, not on the person, but on the house; adjudged that this rating and payment made a settlement. *2 Salk. 478.*

Shall be charged with and pay.] Talborn and Boston. If a man is taxed, and after taxation stays 40 days, it is no settlement unless he pays the tax. *2 Salk. 523.*

The publick taxes or levies of the said town or parish.] No person who shall be assessed to the scavengers rate; or to the repairs of the highways, and shall duly pay the same, shall be deemed to be settled thereby. *9 G. c. 7. s. 6.*

T. 9 An. Paying to the county bridge gains no settlement, for there all the county is liable, and he pays as one of the county, and not as an inhabitant

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bitant of the parish or town where he lives. *Cas. of S. 1.*

By the 21 G. 2. c. 10. Persons assessed to and paying the duty on houses and windows shall not thereby gain a settlement.

X. Of settlement by serving a parish office.

By the 13 & 14 C. 2. c. 12. 40 days inhabitancy shall gain a settlement: By the 1 J. 2. c. 17. Such 40 days are to be reckoned from the delivering of notice in writing: And by the 3 W. c. 11. they are to be reckoned from the publication of such notice in the church.

But if any person who shall come to inhabit in any town or parish shall for himself, and on his own account, execute any publick annual office or charge in the said town or parish, during one whole year, he shall be adjudged to have a legal settlement in the same, tho' no such notice in writing be delivered and published. 3 W. c. 11. s. 6.

By the 9 & 10 W. c. 11. No person who shall come into any parish by certificate shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he shall really and bona fide take a lease of a tenement of the yearly value of 10l. or shall execute some annual office in such parish, being legally placed in such office.

Publick annual office or charge, in the said town or parish.] H. 9 *Ans. Gaston and Milwich.* A person being chosen parish clerk by the parson, served for several years, and received his fees and dues. By the court: It is a parish office, and has the care and custody of the ornaments of the church. 'Tis true if he is poor, and has a family, they may remove him; but if they let him continue a year, none can remove him; for altho'

tho' he came in by the parson only, yet the parish paying him, it is a consent and approbation, and by this consent of theirs the law adjudges him in and by the concurrence of the parish. *Case of S. 241. 2 Salk. 536. Foley 123.*

M. 9 An. St. Mary and St. Lawrence in Reading. The question was, whether the being churchwarden for a borough, which extends itself into several parishes, is such a service of an annual office as will gain a settlement? By the whole court: It was held to be an office, the serving of which for one whole year was sufficient to gain him a settlement in that parish within the borough in which he lived. *Foley 121.*

T. 5 G. Bisham and Cook. Resolved by the whole court, That a collector of births and burials is a sufficient officer to gain a settlement. *Fol. 124.*

H. 2 G. St. Trinity and Garfington. It was held, that a person who was chosen a tythingman for a year, and served that year, was such an officer as thereby gained a settlement. *Fol. 123.*

Certificate, &c. H. 8 G. 2. St. Mary Callender and St. Thomas. A certificate man serving the office of constable, tho' not a parish office, and extending into divers parishes, and not chosen into the office by the parish to which the certificate was given, yet was adjudged by the whole court to gain a settlement in like manner as a churchwarden chosen, not by the parishioners, but by the minister. *Seff. C. V. 1. 315.*

And in *E. 8 G. 2. King and St. Mary Berkhamstead:* The court seemed to be of opinion, that the executing the office of a parish clerk is sufficient for a certificate person to gain a settlement; for it is an annual office, and more. *Seff. C. V. 2. 182;*

XI. Of settlement by renting 10l. a year.

By the 13 & 14 C. 2. c. 12. On complaint within 40 days after any person shall come to settle in any tenement under 10l. a year, two justices may remove him to where he was last legally settled for 40 days.

By the 9 & 10 W. c. 11. No person who shall come into any parish by certificate shall be adjudged by any act whatsoever to have gained a legal settlement in such parish, unless he shall really and bona fide take a lease of a tenement of the yearly value of 10l. or shall execute an annual office in such parish.

Shall come to settle.] For taking land in the parish of whatever value it shall be, without coming to reside there, will not gain a settlement.

In a tenement under 10l. a year.] If the tenement is under 10l. a year, the justices, upon complaint within 40 days, have power to remove the person coming there to reside; if it is not under 10l. a year they have no power to remove him; and continuing unremoveable for 40 days, he thereby gains a settlement.

Ten pounds a year.] Upon these words the value of the tenement is considerable, or what shall be deemed a tenement of 10l. a year, sufficient to gain a settlement. Concerning which it has been adjudged as follows:

H. 13 G. 2. Southwold and Yexford. A person took a house, and agreed to pay 10l. a year for it; and the landlord agreed to make new buildings. These improvements were never made, and the house worth but 6l. a year. By the court: The sessions must judge upon the facts; they have stated that the agreement was for 10l. a year;

a year; this is evidence of the value; but the justices have a right to inquire into the real value, and that is but 6*l.* a year, and there is no fact to shew this 10*l.* a year. Therefore adjudged that this was no settlement. *Seff. C. V. 2. 198.*

T. 3 G. South Sydenham and Lamerton. Order specially stated: A person took a lease of a tenement for 33 years, determinable on three lives, and paid his fine, and the rent reserved was but 7*l.* but the real value was 13*l.* By the court: The quantity of the rent is not material, but the value of the tenement. If there be a lease of lands worth 10*l.* a year, and a fine be paid, and 20*s.* only reserved, it makes a settlement; so if no fine be paid, or no rent reserved, yet if the tenement is worth 10*l.* a year, it makes a settlement; for the settlement depends on the value of the tenement, and not on the rent. *Seff. C. V. 1. 115. Fol. 81.*

T. 15 G. 2. K. and Kinton. Order specially stated: A person rented a tenement at 10*l.* a year, which had been let so for five years before; but the tenement had been usually let at 7*l.* a year, and when the said person was told it was too dear, he said he did it to gain a settlement; but the sessions did not adjudge it a fraud. Upon this it was urged, the consideration here must be, whether upon the state of this case, he rented a tenement under the value of 10*l.* a year, for if not, it is a good settlement; and the not having a sufficient stock is nothing to the value. And all the court agreed that this was a good settlement. *Seff. C. V. 2. 141.*

XII. Of settlement by a person's own estate.

By the 13 & 14 C. 2. c. 12. On complaint within 40 days after any person shall come to settle
in

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in any tenement under 10*l.* a year, two justices may remove him.

And by the 9 & 10 *W. c.* 11. No certificate person shall gain a settlement but by renting 10*l.* a year, or executing an annual office.

Upon which two statutes the following cases are considerable:

How far a person having an estate of his own, tho' under 10*l.* a year, shall gain a settlement thereby within the said statute of the 13 & 14 *C.* 2.

Person not
removeable
from his
own.

E. 11 An. Harrow and Edgware. A person settled at Harrow went into the parish of Edgware, and purchased a copyhold estate for life, and lived therein four or five years, and died. And as this was a tenement under 10*l.* a year, the question was, upon the 13 & 14 *C.* 2. whether this gained him a settlement at Edgware? It was argued, that the statute hath been always held to mean an estate which a man takes to farm, and not an estate of his own; for if a person has a freehold, he cannot be removed from it, tho' not worth 10*l.* a year. And by Parker chief justice and the court: Where a person has an estate for life, or an estate of inheritance of his own, that gains him a settlement, tho' less than 10*l.* a year; for he cannot be removed, and if he cannot be removed, he certainly gains a settlement. *Foley* 257.

E. 3 G. South Sydenham and Lamerton. A person possessed of a lease for years dies intestate; if the next of kin shall be said in law to be settled there, was the question: It was held not, he has only a right, which he must pursue by taking out letters of administration, and no right is vested in him 'till that is done. *Cas. of S.* 103. The same adjudged in the case of *Widworthy and Faringdon*, *T. 10 & 11 G. 2. Andr. 4.*

M. 11

M. 11 G. *Asbottle* and *Wyley*. A poor man built a cottage upon the waste belonging to my lord *Pembroke* without his licence, who never offered to disturb the man in his possession, and he lived in the cottage for 30 years, and by his will left three guineas in the hands of his executors to purchase this cottage of my lord *Pembroke*. Upon his death *Elizabeth* his only child, and heir at law, entered into the cottage, and after married one *Barrow*, and they lived in the cottage, and were in quiet possession for three quarters of a year, and then sold it. The question was, whether the daughter and her husband *Barrow* had gained a settlement by virtue of this inhabitancy in the parish of *Wyley*, in which their cottage was. Mr. *Reeve* argued, that this inhabitancy gained no settlement: The cottager was a disseisor, and had no right to build upon the waste, and was at any time removeable by the lord of the waste, and if he might have been removed within 40 days, his long possession shall give him no title, for he must only be considered as tenant at will, and consequently his continuance upon the cottage, tho' never so long, could give him no settlement: And if the cottager had no right of settlement, none claiming under him shall be in a better condition. The statute of the 31 *El.* prohibits the building of cottages, therefore the erection of one is unlawful, and shall have no encouragement. I admit if one inhabits by virtue of a lease, or other good title, for 40 days, he gains a settlement. But the inhabitancy in this case was without any good title, and consequently can gain no right of settlement. These objections were answered by the court: Who held it clearly to be a good settlement. And tho' it was further objected that the cottager himself was sensible he had no right, by his devising money for the purchase of a term under the lord of the waste,

Poos. (Settlement by estate.)

waste, yet it was over-ruled. And by all the court it was held, that when a man hath such a possession as he cannot be removed from, and hath enjoyed that possession 40 days, he thereby gains a settlement, and that is the reason why a copyholder or lessee for years gains a settlement by an inhabitaney for 40 days; for in these cases the justices of the peace cannot determine his right; this present case is very strong; for the 30 years possession of the cottager without interruption, would have been a good title in an ejectment; and for that reason the justices of the peace cannot determine his right. It appears upon the face of the order that the cottager had a good title in ejectment, and in any case but in a real action. Lord chief justice *Raymond* said, he had known recoveries upon a 20 years quiet possession, and 20 years possession is a title to a plaintiff in ejectment as well as to a defendant. After so long a possession as this, it shall be presumed that the cottager had a licence to erect the cottage; but this case goes further, for besides the 30 years quiet possession of the cottage, here is a descent cast upon the daughter, who was heir to the cottager, and *primâ facie*, it is an inheritance in the daughter, and an estate by disseisin is in law a good estate, and a fee-simple, 'till it be defeated. Wherefore all the court held, that the justices had no jurisdiction in this case, for they could not examine into the title to the land. And the settlement in the parish of *Wyley* was adjudged to be good. *Sess. C. V. 2. 115. Str. 608.*

Purchase
under 30 l.

But there is one exception to all that hath been said concerning a person's being settled by living upon his own estate; and that is in the case of a purchase under the value of 30 l. which is made by act of parliament. 9 G. 2. c. 7. and is thus:

After March 25, 1723. No person shall be deemed to acquire any settlement in any parish or place

place by virtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase doth not amount to the sum of 30*l.* bona fide paid, for any longer or further time than such person shall inhabit in such estate, and shall then be liable to be removed to such parish or place where he was last legally settled before the said purchase and inhabitancy therein.

How far residence upon a man's own estate is necessary to gain him a settlement.

E. 8 G. 2. K. and St. Mary Berkbamstead. Residence necessary.

The husband ran away, and it was not known whether he was alive or dead; in the mean time the wife had a house devised to her in *Northchurch*, and she and her children went to live there. The question was, whether by continuing therein 40 days they gained a settlement. The court seemed to be of opinion, since it was not known that the husband was dead, he must be supposed to be alive, and in that case that the wife could not gain a settlement for herself, but must follow the husband's settlement: And that the husband having not resided 40 days at *Northchurch* in the said house unremoveable, he hath gained no settlement thereby. *Sess. C. V. 2. 182.*

M. 12 G. 2. Souton and Sidbury. Residence on the same estate not necessary.

A person who lived with his family at *Souton*, having an estate at *Sidbury*, which the tenant gave up, went thither and lodged in an alehouse as a guest, without having any certain room there, and staid from *November* to *April*, but sometimes went to *Souton*, where his children and family were, and to other places, as his occasions required, possessed and managed the estate, by repairing fences, hoeing turnips, and the like. The question was, whether such inhabiting, and not upon the estate, would gain a settlement? And the court were of opinion it would; and that it made no difference whether it were in his own house or in an alehouse;

Poor. (Settlement by estate.)

Residence
for 40 days
together not
necessary.

house; for being in the same parish, he could not be removed. *Seff. C. V. 2. 150.*

Another question was moved in the same case, whether since he did not reside there for 40 days together, but for more than 40 days in the whole, such residence shall gain a settlement? And by the whole court: It is not necessary upon the statute, that the residence should be for 40 days successively. *Seff. C. V. 2. 150. Andr. 345.*

And T. 13 G. 2. *St. Neot's* and *St. Clere*. A person at *St. Neot's* was hired, and served a year, and then he returned to *St. Clere*, where he had a joint freehold with his mother, and lived there backwards and forwards, but not 40 days at a time, but more in the whole, and afterwards sold the same. The question was, whether here was any settlement at *St. Clere*. By the court: This depends on the statute of the 13 & 14 C. 2. and 40 days inhabitancy together is not requisite, and the man was well settled at *St. Clere*, for there was a time when by residence of 40 days he could not be removed from thence. *Seff. C. V. 1. 318. Str. 1116.*

Of Removals.

I. Order of removal in general.

II. Order of removal of a certificate person.

III. Appeal against the order of removal.

I. Order of removal in general.

By the 13 & 14 C. 2. c. 12. It is enacted as follows: *Whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages,*

cottages, and the most woods for them to burn and destroy, and when they have consumed it, then to another parish, and at last become rogues and vagabonds, it is enacted, that it shall be lawful upon complaint made by the churchwardens or overseers of any parish to any justice of the peace within 40 days after any such person coming so to settle in any tenement under the yearly value of 10l. for any two justices of the peace (one whereof is of the Quorum) of the division where any person that is likely to become chargeable to the parish shall come to inhabit, to grant their warrant to remove and convey such person to such parish where he was last legally settled, unless he give sufficient security for the discharge of the said parish, to be allowed by the said justices. §. 1.

And if such person shall refuse to go, or shall not remain in such parish where he ought to be settled, but shall return of his own accord to the parish from whence he was removed, one justice may send him to the house of correction; there to be punished as a vagabond. §. 3. And by the 17 G. 2. c. 5. All persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of two justices, without bringing a certificate from the parish or place whereunto they belong, shall be deemed idle and disorderly persons, and any one justice may commit them (being thereof convicted before him by his own view, or their own confession, or by the oath of one credible witness) to the house of correction, there to be kept to hard labour for any time not exceeding one month. §. 1.

And if the churchwardens and overseers of the parish to which he shall be removed refuse to receive such person, and to provide work for him as other inhabitants of the parish; any justice of that division shall bind any such officer in whom there shall be default to the assizes or sessions, there to be indicted

10002. (Removal.)

indicted for his contempt on that behalf. 13 & 14 C. 2. c. 12. s. 3.

And by the 3 W. c. 11. If the churchwardens or overseers of the parish or town to which the person shall be so removed shall refuse or neglect to receive the said person, he or they so offending shall (on proof thereof by the oath of two witnesses, before one justice of the place to which the person shall be removed) forfeit for each offence 5 l. to the use of the poor of the parish or town from which such person was removed, to be levied by distress, by warrant to the constable of the parish or town where such offender dwells; and for want of sufficient distress, the said justice shall commit the offender to the common gaol for 40 days. s. 10.

Warrant of one justice for a person to be examined concerning his settlement.

Berkshire. } To the constable of ———

FORASMUCH as complaint hath been made before me ——— one of his majesty's justices of the peace in and for the said county, by the churchwardens and overseers of the poor of the parish of ——— in the county aforesaid, that A. P. hath come to inhabit in the said parish, not having gained any legal settlement therein, nor produced any certificate owning him to be settled elsewhere, and that the said A. P. is likely to become chargeable to the said parish of ——— These are therefore to require you to bring the said A. P. before me, to be examined concerning the place of his last legal settlement. Herein fail not. Given under my hand and seal the ——— day of ———

Warrant

Warrant of two justices in order to the adjudication.

Berkshire, ss. { To, &c. ———

FORASMUCH as complaint hath been made before us, two of his majesty's justices of the peace in and for the said county, and one of us of the Quorum, by the churchwardens and overseers of the poor of the parish of ——— in the said county, that A. P. hath come to inhabit in the said parish, not having gained any legal settlement therein, nor produced any certificate owning him to be settled elsewhere; and that he the said A. P. is likely to become chargeable to the said parish of ——— These are therefore to require you to bring the said A. P. before us, at the house of ——— in ——— in the said county, on ——— the ——— day of ——— at the hour of ——— in the afternoon of the same day, to be examined concerning the place of his last legal settlement, and to be further dealt withal according to law. Given under our hands and seals the ——— day of ———

It may also be necessary in cases of doubt or difficulty to give notice to the overseers of the parish or place where the settlement is supposed to be, that they may attend, if they think proper, when the adjudication is made; which might prevent appeals oftentimes from such adjudications and orders; which notice may be to the following effect.

Summons

Summons to shew cause against an order of removal.

Berkshire, ff. **T**O the churchwardens and overseers of the poor of the parish of _____ in the county of _____ and to every of them.

This is to summon you, or some of you, to appear (if you shall so think proper) before _____ and such other his majesty's justices of the peace for the said county of B. as shall be at the house of _____ in _____ in the said county of B. on _____ the the _____ day of _____ at the hour of _____ in the afternoon of the same day, to shew cause why A. P. should not be removed from the parish of _____ in the said county of B. to your said parish of _____ Given under _____ hand _____ and seal _____ this _____ day of _____ in the year of our lord _____

And then the general form of an order of removal as grounded upon the statute of the 13 & 14 C. 2. above recited may be thus.

The form of a general order of removal.

Middlesex. **T**O the churchwardens and overseers of the poor of the parish of Kensington in the said county of Middlesex, and to the churchwardens and overseers of the poor of the parish of Wandsworth in the county of Surry, and to each and every of them.

Upon the complaint of the churchwardens and overseers of the poor of the parish of Kensington aforesaid in the said county of Middlesex, unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county of Middlesex, and one of us of the

the Quorum, that John Hopkins, Sarah his wife, William their son aged four years, and Mary their daughter aged two years, have come to inhabit in the said parish of Kensington, not having gained a legal settlement there, nor produced any certificate owning them, or any of them, to be settled elsewhere; and that the said John Hopkins, Sarah his wife, and William and Mary their children, are likely to become chargeable to the said parish of Kensington: We the said justices, upon due proof made thereof, as well upon the examination of the said John Hopkins upon oath, as otherwise, and likewise upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge that the lawful settlement of them the said John Hopkins, Sarah his wife, and William and Mary their children, is in the said parish of Wandsworth: We do therefore require you the said churchwardens and overseers of the poor of the said parish of Kensington, or some or one of you, to convey the said John Hopkins, Sarah his wife, and William and Mary their children, from and out of your said parish of Kensington, to the said parish of Wandsworth, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original; and we do also hereby require you the said churchwardens and overseers of the poor of the said parish of Wandsworth, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the — day of — in the — year of the reign of his majesty king George the second.

Order of removal of a certificate person.

By the 8 & 9 W. c. 30. If any person who shall come into any parish or place there to reside, shall deliver

Poos. (Removal.)

deliver a certificate to one of the churchwardens or overseers there, such certificate shall oblige the parish or place granting the same, to receive and provide for the person mentioned in the said certificate, together with his family, as inhabitants of that parish, whenever they shall happen to become chargeable to, or be forced to ask relief of, the parish, township or place, to which such certificate was given; and then and not before it shall be lawful for any such person and his children, tho' born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed and settled in the parish or place whence such certificate was brought. s. 1.

And by the 3 G. 2. c. 29. When any overseer, or other person, shall remove back any persons or their families, residing under a certificate, and becoming chargeable to the parish or place to which they shall belong; such overseer, or other person, shall be reimbursed such reasonable charges as they may have been put unto in maintaining and removing such persons by the churchwardens or overseers of the place to which such persons are removed, the said charges being first ascertained and allowed by one or more justices for the county or place to which such removal shall be made; which said charges so ascertained and allowed, shall in case of refusal of payment, be levied by distress and sale of the goods of the churchwardens and overseers of the place to which such certificate person is removed, by warrant of such justice or justices. s. 9.

Form of an order of removal of a certificate person.

Middlesex. { To the churchwardens and overseers of the poor of the parish of *Kensington* in the said county of *Middlesex*, and to the churchwardens and overseers of the poor of the parish of *Wandsworth* in the county of *Surry*.

WHEREAS complaint hath been made by the churchwardens and overseers of the poor of the parish of *Kensington* aforesaid, in the said county of *Middlesex*, unto us, whose names are hereunto set, and seals affixed, being two of his majesty's justices of the peace in and for the said county of *Middlesex*, and one of us of the Quorum, that *John Hopkins*, *Sarah* his wife, and *William* their son, aged four years, and *Mary* their daughter aged two years, having for some time last past dwelt in the parish of *Kensington* aforesaid, in the said county of *Middlesex*, being allowed so to do by reason of a certificate bearing date the — day of — in the year of our lord — under the hands and seals of *A. B.* and *C. D.* churchwardens, and *A. O.* and *B. O.* overseers of the poor of the said parish of *Wandsworth* aforesaid in the said county of *Surry*, attested by *A. W.* and *W. B.* two credible witnesses, and allowed by *J. P.* and *K. P.* esquires, two of his majesty's justices of the peace for the said county of *Surry*, according to the directions of the several acts of parliament in such case made and provided, are become chargeable to the parish of *Kensington*, in the said county of *Middlesex*: And whereas it appears to us, as well upon the oath of the said *John Hopkins* as otherwise, that neither they the said *John Hopkins*, *Sarah* his wife,

Poor. (Removal.)

wife, William and Mary their children, nor any of them, have gained any legal settlement since the date of the said certificate: Whereby and upon due consideration had of the premisses, it appears to us, and we do hereby adjudge that the said John Hopkins, Sarah his wife, and William and Mary their children, are become chargeable to the said parish of Kensington, and that the place of the last legal settlement of them, and every of them, is in the said parish of Wandsworth, in the said county of Surry: These are therefore to require you the said churchwardens and overseers of the poor of the said parish of Kensington, or some or one of you, to convey the said John Hopkins, Sarah his wife, and William and Mary their children, from and out of your said parish of Kensington, to the said parish of Wandsworth, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof at the same time shewing to them the original; and we do also hereby require you the said churchwardens and overseers of the poor of the said parish of Wandsworth, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the ——— day of ——— in the year of our lord ———

It doth not appear, how it becomes necessary in the order of removal to take any notice of the certificate at all, or to make any further use of it than as an evidence to the justices of the settlement: And if it is not necessary to recite, 'tis best to omit the same; because a misrecital either in the date, or in the names of the persons, or in any other material part, will be fatal, for that then there will be no such certificate as is there recited, and the order must fall of course. Where the persons are only *likely to become chargeable*, it is then requisite to set forth in the order that they

1

have

have no certificate, for if they have one, they cannot be removed 'till they actually be chargeable. But if the order sets forth that they are chargeable, in that case it is not at all material, whether they have a certificate or not; for in both cases alike they are then equally removeable. And if so, then the form may be this, both for a certificate person, and for a person having no certificate, who is actually become chargeable.

Middlesex. **T**O the churchwardens and overseers of the poor of the parish of Kensington in the said county of Middlesex, and the churchwardens and overseers of the poor of the parish of Wandsworth in the county of Surry, and to each and every of them.

Upon the complaint of the churchwardens and overseers of the poor of the parish of Kensington aforesaid in the said county of Middlesex, unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county of Middlesex, and one of us of the Quorum, that John Hopkins and Sarah his wife, William their son aged four years, and Mary their daughter aged two years, have come to inhabit in the said parish of Kensington, not having gained a legal settlement there, and that the said John Hopkins, Sarah his wife, William and Mary their children, are now chargeable to the said parish of Kensington, We the said justices, upon due proof made thereof, as well upon the examination of the said John Hopkins upon oath, as otherwise, and likewise upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge that the lawful settlement of them the said John Hopkins, Sarah his wife, and William and Mary their children, is in the said parish of Wandsworth in the said county of Surry; We do therefore require you the said churchwardens and

Poor. (Removal.)

overseers of the poor of the said parish of Kensington, or some or one of you, to convey the said John Hopkins, Sarah his wife, William and Mary their children, from and out of your said parish of Kensington to the said parish of Wandsworth, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof at the same time shewing to them the original; and we do also hereby require you the said churchwardens and overseers of the poor of the said parish of Wandsworth, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the ——— day of ——— in the ——— year of the reign of his said majesty king George the second.

Appeal against the order of removal.

**Power of
appealing.**

All persons who think themselves aggrieved by any such judgment of the said two justices, may appeal to the justices of the peace of the said county at their next quarter-sessions, who shall do them justice according to the merits of their cause. 13 & 14 C. 2. c. 12. s. 2.

And by the 8 & 9 W. c. 30. The appeal against any order of removal of any poor person shall be had, prosecuted and determined, at the general or quarter sessions of the peace for the county, division or riding, wherein the parish, township, or place from whence such poor person shall be removed doth lie, and not elsewhere. s. 6.

9 G. c. 7. s. 8. No appeal from any order of removal shall be proceeded upon without reasonable notice, the form whereof may be thus:

To

To the churchwardens and overseers of the poor
of the parish of ——— in the county of ———

THIS is to give notice to you, and every
of you, that we the churchwardens and
overseers of the poor of the parish of ——— in
the county of ——— do intend at the next quar-
ter-sessions of the peace to be holden for the said
county of ——— to commence and prosecute an
appeal against an order of *J. P.* and *K. P.* es-
quires, two of his majesty's justices of the peace
for the said county of ——— for and concerning
the removal of ——— to our said parish of ———
Witness our hands this ——— day of ———

A. B. }
C. D. } Churchwardens.

E. F. }
G. H. } Overseers of the poor.

Of the relief and ordering of the poor.

By the 43 *Eliz. c. 2.* *The churchwardens and overseers, with the consent of two justices, (1 Q.) shall take order from time to time for setting to work the children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children; and for setting to work all such persons, married or unmarried, having no means to maintain them, and using no ordinary and daily trade; and for the necessary relief of the lame, impotent, old, blind, and such other among them being poor and not able to work. s. 1.*

And the said justices, or one of them, shall send to the house of correction or common gaol, such as shall not employ themselves to work, being appointed thereunto as aforesaid. s. 4.

Poor. (Relief.)

Poor and not able to work.] M. 3 G. K. and the inhabitants of Highworth. There was an order to pay 3 s. weekly to a poor person, by the parish of Highworth, so long as he shall continue poor: It was objected, that by the statute it ought to appear that they are poor and impotent. Parker chief justice: " I favour these orders as much as I can, because no body takes care to draw them up for the poor. But it must be quashed. Str. 10.

Setting up
trades.

By the 3 C. c. 4. The churchwardens and overseers may, by the consent of two justices, (1 Q.) within their respective limits, wherein shall be more justices than one; and where no more shall be than one, with the assent of that one justice, set up and use any trade, mystery or occupation only for the setting on work and better relief of the poor. s. 22.

Erecting
cottages.

The churchwardens and overseers, or the greater part of them, by the leave of the lord of the manor, whereof any waste or common within their parish is parcel, and on agreement with him made in writing under his hand and seal or otherwise, according to any order to be set down by the justices in sessions, by like leave and agreement of the lord in writing under his hand and seal, may build in fit and convenient places of habitation in such waste or common, at the charge of the parish, or otherwise of the hundred or county as aforesaid, to be rated and gathered in manner before expressed, convenient houses of dwelling for the said impotent poor; and may place inmates, or more families than one, in one cottage or house, notwithstanding the statute of the 31 *Elix.* which cottages, or places for inmates, shall not be employed for any other habitation, but only for impotent and poor of the same parish, placed there by the churchwardens and overseers. 43 *El. c. 2. s. 5.*

It

It shall be lawful for the churchwardens and Overseers in any parish, township or place, with the consent of the major part of the parishioners or inhabitants in vestry, or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to purchase or hire any house or houses in the same parish, township or place, and to contract with any person or persons for the lodging, keeping, maintaining and employing any or all such poor in their respective parishes, townships or places, as shall desire to receive relief or collection; and there to keep, maintain and employ all such poor persons, and take the benefit of the work, labour and service of any such poor persons who shall be kept or maintained in any such house or houses, for the better maintenance and relief of such poor persons who shall be there kept or maintained. And if any poor person shall refuse to be lodged, kept or maintained in such house or houses, he shall be put out of the parish book, and shall not be intitled to receive relief from the churchwardens and overseers. 9 G. c. 7. s. 4.

And where any parish or township shall be too small to purchase or hire such house or houses, it shall be lawful for two or more such parishes, townships or places, with the consent of the major part of the parishioners or inhabitants of their respective parishes, townships or places, in vestry, or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, and with the approbation of any justice of the peace dwelling in or near any such parish, township or place, signified under his hand and seal, to unite in purchasing, hiring or taking such house for the lodging, keeping and maintaining of the poor of the several parishes, townships or places

Overseers may contract for the maintenance and employment of the poor.

Two or more places may join.

Poor. (Relief.)

places so uniting, and there to keep, maintain and employ the poor of the respective parishes, townships or places so uniting, and to take and have the benefit of the work, labour, or service of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained and employed. And if any poor person in the respective parishes, townships or places so uniting, shall refuse to be lodged, kept and maintained in the house-hired or taken for such uniting parishes, townships or places, he shall be put out of the collection book, and not intitled to ask relief. 9 G. c. 7. s. 4.

The overseers of one place may contract with those of another without joining.

And it shall be lawful for the churchwardens and overseers of any parish, township or place, with the consent of the major part of the parishioners or inhabitants of the said parish, township or place, where such house or houses shall be purchased or hired for the purposes aforesaid, in vestry, or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to contract with the churchwardens and overseers of any other parish, township or place, for the lodging, maintaining, or employing of any poor person or persons of any such parish, township or place, as to them shall seem meet. And if any poor person of such other parish, township or place, shall refuse to be lodged, maintained and employed in such house or houses, he shall be put out of the collection book, and not be intitled to have relief. 9 G. c. 7. s. 4.

Order of maintenance by the justices,

No person shall be allowed to have or receive collection at the charge of the parish, but by authority under the hand of one justice residing within such parish, or (if none be there dwelling) in the parts next or near adjoining, or by order of the justices in sessions, except in cases of pestilential

lential diseases, plague or small pox, for such families only as shall be therewith infected. 3 W. c. 11. f. 11.

And no justice shall order relief to any poor person, until oath be made before him of some matter which he shall judge to be a reasonable cause for having such relief; and that the same person had by himself, or some other, applied for relief to the parishioners at some vestry, or other publick meeting, or to two of the overseers, and was by them refused to be relieved; and until such justice hath summoned two of the overseers to shew cause why such relief should not be given, and the person so summoned hath been heard, or made default to appear. 9 An. c. 7. f. 1.

And there shall be provided and kept in every parish a book, wherein the names of all persons who receive collection shall be registred, with the day and year when they were first admitted to have relief, and the occasion which brought them under that necessity; and yearly in *Easter* week, or as often as shall be thought convenient, the parishioners shall meet in the vestry, or other usual place of meeting in the parish, before whom the book shall be produced, and all persons receiving collection to be called over, and the reasons of their taking relief examined, and a new list made and entred. 3 W. c. 11. f. 11.

Persons relieved to be entred in a book.

And no officer shall (except upon sudden and emergent occasions) bring to the account of the parish any money he shall give to any poor person who is not registred in such book, as a person intitled to receive collection; on pain of 5*l.* by distress, by warrant of two justices, who shall have examined into and found him guilty of such offence, which said sum shall be applied to the use of the poor, by direction of the justices. 9 G. c. 7. f. 2.

And badged.

Moreover, every such person as shall be upon the collection, and receive relief of any parish or place, and the wife and children of any such person cohabiting in the same house, (such child only excepted as shall be by the churchwardens and overseers permitted to live at home in order to attend an impotent and helpless parent) shall upon the shoulder of the right sleeve of the uppermost garment, in an open and visible manner, wear a large *Roman P.* together with the first letter of the name of the place whereof such poor person is an inhabitant, cut either in red or blue cloth, as by the churchwardens and overseers shall be directed: And if any such poor person shall neglect or refuse to wear such badge or mark, it shall be lawful for one justice to punish such offender, either by ordering his allowance to be abridged or withdrawn, or otherwise by committing him to the house of correction, to be whipped and kept to hard labour not exceeding 21 days; and if any churchwarden or overseer shall relieve any such poor person, not wearing such badge, and be thereof convicted on oath of one witness before one justice, he shall forfeit 20 s. by distress, half to the informer and half to the poor. 8 & 9 W. c. 30. s. 2.

Oath of a poor person wanting maintenance.

A. P. of ——— in the parish of ——— in the county of ——— maketh oath, that he is very poor and impotent, and not able to provide for himself and his family, and that his lawful settlement is in the said parish of ——— and that on ——— last he did apply for relief to the parishioners of the said parish at a vestry [or other publick] meeting, [or to two of the overseers of the poor

poor of the said parish] and was by them refused to be relieved.

A. P.

*Taken and made before me, one of his
majesty's justices of the peace for the
said county, the ——— day of ———*

J. P.

Warrant thereupon to summon the
overseers.

Berks. { To the constables of ——— in the parish
of ——— in the said county, and to
every of them.

WHEREAS A. P. of your parish hath this
day made oath before me ——— one of his
majesty's justices of the peace in and for the said
county, that he the said A. P. is very poor and im-
potent, and not able to provide for himself and his
family; and that he the said A. P. did on ———
last apply to the parishioners of your said parish at
a vestry [or other publick] meeting [or to A. B.
and C. D. two of the overseers of the poor of the
said parish] and was by them refused to be relieved:
These are therefore to require you in his said maje-
sty's name, to summon two of the overseers of the
poor of the said parish, to appear before me on
——— next, at the house of ——— in ——— in
the said county, at the hour of ——— in the fore-
noon of the same day, to shew cause why relief
should not be given to the said A. P. and be you
then there with this precept, to certify what you
shall have done in the execution hereof. Given un-
der my hand and seal the ——— day of ——— in
the ——— year ———

Order

And badged.

Moreover, every such person as shall be upon the collection, and receive relief of any parish or place, and the wife and children of any such person cohabiting in the same house, (such child only excepted as shall be by the churchwardens and overseers permitted to live at home in order to attend an impotent and helpless parent) shall upon the shoulder of the right sleeve of the uppermost garment, in an open and visible manner, wear a large *Roman* P. together with the first letter of the name of the place whereof such poor person is an inhabitant, cut either in red or blue cloth, as by the churchwardens and overseers shall be directed: And if any such poor person shall neglect or refuse to wear such badge or mark, it shall be lawful for one justice to punish such offender, either by ordering his allowance to be abridged or withdrawn, or otherwise by committing him to the house of correction, to be whipped and kept to hard labour not exceeding 21 days; and if any churchwarden or overseer shall relieve any such poor person, not wearing such badge, and be thereof convicted on oath of one witness before one justice, he shall forfeit 20 s. by distress, half to the informer and half to the poor. 8 & 9 W. c. 30. s. 2.

Oath of a poor person wanting maintenance.

A. P. of ——— in the parish of ——— in the county of ——— maketh oath, that he is very poor and impotent, and not able to provide for himself and his family, and that his lawful settlement is in the said parish of ——— and that on ——— last he did apply for relief to the parishioners of the said parish at a vestry [or other public] meeting, [or to two of the overseers of the poor

Poor. (Relief.)

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poor of the said parish] and was by them refused to be relieved.

A. P.

*Taken and made before me, one of his
majesty's justices of the peace for the
said county, the ——— day of ———*

J. P.

**Warrant thereupon to summon the
overseers.**

Berks. { *To the constables of ——— in the parish
of ——— in the said county, and to
every of them.*

WHEREAS A. P. of your parish hath this
day made oath before me ——— one of his
majesty's justices of the peace in and for the said
county, that he the said A. P. is very poor and im-
potent, and not able to provide for himself and his
family; and that he the said A. P. did on ———
last apply to the parishioners of your said parish at
a vestry [or other publick] meeting [or to A. B.
and C. D. two of the overseers of the poor of the
said parish] and was by them refused to be relieved:
These are therefore to require you in his said maje-
sty's name, to summon two of the overseers of the
poor of the said parish, to appear before me on
——— next, at the house of ——— in ——— in
the said county, at the hour of ——— in the fore-
noon of the same day, to shew cause why relief
should not be given to the said A. P. and be you
then there with this precept, to certify what you
shall have done in the execution hereof. Given un-
der my hand and seal the ——— day of ——— in
the ——— year ———

Order

Order for maintenance.

Berks. **W**HEREAS A. P. of ——— in the parish of ——— in the said county of ——— yeoman, hath made oath before me ——— one of his majesty's justices of the peace for the said county, that he the said A. P. is very poor and impotent, and not able to work; and that he the said A. P. did on ——— last apply for relief to the parishioners of the said parish of ——— at a vestry [or publick] meeting [or to A. B. and C. D. two of the overseers of the poor of the said parish] and was by them refused to be relieved; and whereas A. B. and C. D. overseers of the poor of the said parish, have been duly summoned by me to shew cause why relief should not be given to the said A. P. and have appear'd before me in pursuance of such summons, but have not made any sufficient cause to appear as aforesaid [or, but have made default to appear before me according to such summons]: I do therefore hereby order the churchwardens and overseers of the poor of the said parish, or some of them, to pay unto the said A. P. the sum of ——— weekly and every week, for and towards his support and maintenance, until such time as they shall be otherwise order'd according to law to forbear the said allowance. Given under my hand and seal at ——— in the said county ——— the ——— day of ——— in the ——— year.

Contract for maintenance.

AT a publick meeting of the inhabitants of the parish of ——— in the county of ——— for that purpose assembled, upon usual notice thereof first given; it is contracted, by and with the consent of the major part of the said inhabitants so assembled as aforesaid, between A. B. and C. D. churchwardens,

wardens, and E. F. and G. H. overseers of the poor of the said parish, of the one part, and A. M. of ——— in the said parish, yeoman, of the other part; that he the said A. M. shall and will during the space of one whole year, to commence from ——— next ensuing, at his own proper costs and charges in the house in which he now dwelleth, find, provide and allow unto all such poor people as shall be lawfully intitled to relief and maintenance from the said parish, and shall be brought unto him by the churchwardens or overseers of the poor aforesaid, or any of them, or by their or any of their successors for the time being, sufficient lodging, meat, drink, cloathing, employment, and other things necessary for their keeping and maintenance; and that in consideration thereof the said churchwardens and overseers of the poor, and their successors respectively, shall pay or cause to be paid to the said A. M. the sum of ——— in equal proportions ——— the said A. M. to have moreover and take to himself the benefit of the said poor peoples work, labour, and service during the said term. In witness whereof the parties to these presents have hereunto set their hands the ——— day of ———

It may perhaps be necessary to insert a clause with respect to the article of cloathing; setting forth in what condition they shall go, and in what condition be delivered back again.

As also if they shall die, who shall be at the expence of burying them, and what shall become of their cloaths and other small effects.

As also, if they shall be unruly; who shall be at the charge of sending them to the house of correction, or otherwise reducing them to good behaviour.

And other clauses as there may be occasion.

If

Poore. (Relief.)

If two parishes shall join in such contracting, it will be necessary to insert in the contract the consent of a justice of peace, as thus :

_____ by and with the consent of the major part of the said inhabitants so assembled as aforesaid respectively, and also by and with the consent of J. P. esquire, one of his majesty's justices of the peace for the said county, dwelling in the said parish of _____ [or, near to the said parishes or townships of] _____

And the assent of the said justice may be indorsed thereon as follows ;

I _____ esquire, one of his majesty's justices of the peace for the within mentioned county of _____ and dwelling in the within mentioned parish of _____ [or, near to the within mentioned parishes or townships of _____] do consent unto, allow, and approve of the within written contract. Given under my hand and seal the _____ day of _____

Of the overseers account.

Account.

By the 43 *El. c. 2.* The churchwardens and overseers shall within four days after the end of their year, and other overseers nominated, make and yield up to two justices (1 *Q.*) a true and perfect account of all sums by them received, or rated and sessed and not received, and also of such stock as shall be in their hands, or in the hands of any of the poor to work, and of all other things concerning their office : And such sums of money as shall be in their hands, shall pay and deliver over to their successors : And the subsequent churchwardens or overseers, by warrant from two such justices, may levy by distress and sale of the offender's goods the said sums or stock which shall be behind on any account to be made ;
and

and in defect of such distress, two such justices may commit him to the common gaol, there to remain without bail or mainprize until payment of the said sum and stock: And also any such two justices may commit to the said prison every one of the said churchwardens and overseers, which shall refuse to account, there to remain without bail or mainprize until he hath made a true account, and satisfied and paid so much as upon the said account shall be remaining in his hand.

s. 3, 4.

And by the 17 G. 2. c. 38. It is enacted as follows: The churchwardens and overseers shall yearly within 14 days after other overseers shall be appointed, deliver in to the succeeding overseers a just account in writing, fairly entred in a book to be kept for that purpose, and signed by them, of all sums by them received, or rated and not received, and also of all materials that shall be in their hands, or in the hands of any of the poor to be wrought, and of all money paid by such churchwardens and overseers so accounting, and of all other things concerning their office; and shall also pay all sums which shall be in their hands to the succeeding overseers; which account shall be verified by oath before one justice, who shall sign and attest the taking of the same at the foot of the account without fee; and the said books shall be preserved by the churchwardens and overseers in some publick place, who shall permit any person assessed, or liable to be assessed, to inspect the same at all seasonable times, paying 6 *d.* for such inspection, and shall upon demand give copies at the rate of 6 *d.* for every 300 words, and so in proportion. And if they shall refuse or neglect to make and yield up such account verified as aforesaid within such time, or shall refuse or neglect to pay over the money and other things in their hands; any two justices may
commit

Poor. (Account.)

commit them to the common gaol, 'till they shall have given such account, or shall have paid and yielded up such money and other things in their hands as aforesaid. *f. 1, 2.*

Allowance of the account.

Berks, ff. **P**ERUSED and allowed (having been first signed and verified on oath by A. B. and C. D. churchwardens, and E. F. and G. H. overseers of the poor) by me, one of his majesty's justices of the peace in and for the said county the _____ day of _____

J. P.

Penalty of overseers for the neglect of their duty.

In general, overseers being negligent in their office, shall forfeit for every default 20 s. to the poor, to be levied by some or one of the churchwardens or overseers, by warrant of two justices (1 2.) by distress and sale; or in defect thereof, any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize 'till the said forfeiture shall be paid. 43 *El. c. 2. f. 2, 11.*

And by the 17 *G. 2. c. 38.* Any parish officers neglecting to obey any directions of that act, being convicted thereof on oath before two justices in two kalendar months after the offence committed, shall forfeit not exceeding 5 l. nor less than 40 s. to the poor, by distress and sale. *f. 14.*

And in all actions to be brought in the courts at *Westminster*, or at the assizes, for the recovery of any sum mispent or taken to their own use by the churchwardens or overseers, the evidence of the parishioners, other than such as receive alms, shall be admitted. 3 *W. c. 11. f. 12.*

Indemnity

Indemnity of overseers in the performance of their duty.

By the 7 J. c. 5. and 21 J. c. 12. If any action be brought against any overseer, or other person which in his aid or by his commandment shall do any thing concerning his office, he may plead the general issue, and if he recovers he shall have double costs; and such action shall be laid in the proper county, and not elsewhere.

And by the 43 El. c. 2. Persons sued for any thing done on that act, may plead the general issue, and have treble damages with costs, and that to be assessed by the same jury or writ to inquire of the damages. s. 19.

Servants.

Under this title are also comprehended labourers, journeymen, artificers, and other workmen.

Concerning the settlement of servants, see also title (P002.)

Who may be compelled to serve, and for what term.

NO person shall retain, or be retained, to work for any less term than a year in any of the crafts of clothiers, woollen cloth weavers, tuckers, fullers, clothworkers, dyers, hosiers, taylor, shoemakers, tanners, pewterers, bakers, brewers, glovers, cutlers, smiths, farriers, curriers, sadlers, spurriers, turners, cappers, hat-makers, butchers, cooks or millers. 5 Eliz. c. 4.

And

Servants.

And no person who shall retain any servant, shall put away his said servant, and no person retained according to this statute shall depart before the end of his term, unless it be for some reasonable cause, to be allowed before one justice or mayor, to whom the party grieved shall complain: And no master shall put away any such servant at the end of his term, nor shall any such servant depart at the end of his term, without one quarter's warning, on pain herein after following.
f. 5, 6.

Penalties.

And if any person after he hath retained any servant shall put him away before the end of his term, unless it be for some reasonable cause to be allowed as aforesaid; or shall put him away at the end of his term without a quarter's warning; unless he can prove by two witnesses such reasonable cause, or such quarter's warning, before the judges of assize, justices of the peace in sessions, or the mayor and two aldermen, (or two discreet burghesses, if there are no aldermen) in corporations — he shall forfeit 40*s.* *f. 8.*

And if any servant retained according to this statute shall depart from his service before the end of his term, unless it be for some reasonable cause, to be allowed as aforesaid, or at the end of his term depart without a quarter's warning before two witnesses; or if any person bound to serve in husbandry, or other arts above mentioned, by the year or otherwise, do on request refuse to serve for the wages to be limited by this statute; or promise to serve, and do not serve, — then on complaint and conviction before two justices, or mayor and two aldermen, (or two discreet burghesses where there are no aldermen) he shall be committed to ward, until he shall be bound to serve and continue for the wages that shall be then limited; and to be discharged upon his delivery without any fee to the gaoler. 5 *El. c. 4. f. 9.*

If

If a woman who is a servant shall marry, yet she must serve out her time, and her husband cannot take her out of her master's service. *Dalt.* Maid servant marrying.

c. 58. Wood b. 1. c. 6.

If a person retain a servant generally without expressing any time, the law shall construe it to be for one year, for that retainer is according to law. *2 Inst. 42.* Retainer for a year.

By the retainer, the servant is in service presently by the law, altho' he cometh not into his master's service in deed. *Dalt. c. 58.*

If a married man and his wife do bind themselves to serve, they shall be compelled to serve according to their agreement. *Dalt. c. 58.* Married person hiring.

If a servant retained for a year happen within the time of his service to fall sick, or to be hurt or disabled by the act of God, or in doing his master's business, yet the master must not therefore put such servant away, nor abate any part of his wages for such time. *Dalt. c. 58.* Servant falling sick.

Rating of wages.

The justices of every shire, riding and liberty, or the greater part of them being then resident within the same, and the sheriff, if he conveniently can, and every mayor and other head officer within any city or town corporate, wherein is any justice of the peace within the limits of the said city or town corporate, and of the said corporation, shall yearly at *Easter* sessions, or within six weeks after, assemble such discreet persons as they shall think meet, and having respect to the plenty or scarcity of the time, and other circumstances, shall have authority to limit, rate and appoint the wages as well of such the said artificers, handicraftsmen, husbandmen, or any other labourer, servant or workman, whose wages in time past have been by any law or statute rated and appointed,

Servants.

appointed, as also the wages of all other labourers, artificers, workmen, or apprentices of husbandry, which have not been rated, as they shall think meet by their discretions, to be rated, limited or appointed by the year, or by the day, week, month or otherwise, with meat and drink, or without meat and drink, and what wages every workman or labourer shall take by the great for mowing, reaping or threshing of corn and grain, or for mowing and making of hay, or for ditching, paving, railing or hedging by the rod, perch, lugg, yard, pole, rope or foot, and for any other kind of reasonable labour or service. 5 *El. c. 4.*

f. 15.

Giving more
than is
rated.

If any person shall retain or keep any servant, workman or labourer, or shall give any greater wages or other commodity than is mentioned in this act, he shall, on conviction before any of the justices, or other head officers, be imprisoned 10 days without bail, and forfeit 5 *l.* half to the king, and half to him that shall sue before the said justices in their sessions. 5 *El. c. 4. f. 18.*

But yet masters may reward a well deserving servant over and above his wages, according as he shall deserve, so it be not by way of promise or agreement upon his retainer. *Dalt. c. 58.*

Taking
more.

And every person that shall be so retained and take wages contrary to the said statute of the 5 *Eliz.* and shall be thereof convicted before the justices aforesaid, or any two of them, or before the mayor or head officers as aforesaid, he shall be imprisoned for 21 days without bail. 5 *El. c. 4. f. 19.*

Contract to
the contrary
void.

And every retainer, promise, gift or payment of wages, or other thing contrary to the said act, and every writing and bond to be made for that purpose, shall be void. 5 *El. c. 4. f. 20.*

Paying less
than is
rated.

If any clothier, or other, shall refuse to pay so much wages to their weavers, spinsters, workmen

Servants.

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men or workwomen, as shall be rated, and be convicted thereof by confession, or oath of two witnesses, at the assizes or sessions, or before any two justices (1 Q.) he shall forfeit 10 s. to the party grieved, to be levied by distress and sale.
1 J. c. 6. s. 7.

Time of working for labourers.

All artificers and labourers being hired for wages by the day or week, shall betwixt the midst of *March* and *September* be and continue at their work from five in the morning 'till after seven at night, (except in the time of breakfast, dinner or drinking, which shall not exceed two hours and an half in a day, that is to say, at every drinking one half hour, for his dinner one hour, and for his sleep, when he is allowed to sleep, that is from the midst of *May* to the midst of *August*, half an hour at the most, and at every breakfast one half hour:) And all the said artificers and labourers, between the midst of *September* and the midst of *March*, shall be and continue at their work, from the spring of the day in the morning, until night, except it be in the time before appointed for breakfast and dinner; on pain to forfeit 1 d. for every hour's absence, to be deducted out of his wages.
5 El. c. 4. s. 12.

Working in harvest.

In the time of hay and corn harvest the justices of the peace, and also the constable or other head officer, upon request, and for avoiding the loss of any corn, grain or hay, may cause all such persons as be meet for labour, by the directions of the said justices, or constables, or other head officers, to serve by the day for mowing, reaping, shearing or getting in corn, grain and hay, according

Servants.

cording to the skill and quality of the person; and persons refusing shall suffer imprisonment in the stocks by the space of two days and one night, and the constable, on complaint, shall set him in the stocks accordingly, on pain of 40s. half to the king, and half to him who shall sue. 5 *El.* c. 4. *f.* 22.

Provided that all persons that have accustomed to go into other shires for harvest work, and having at that time not harvest work sufficient in the same town or county where they dwelt in the winter last past, bringing with them a testimonial under the hand and seal of one justice of the shire, or other head officer of the town or place that they came from, testifying the same, for which he shall not pay above 1*d.* (other than such person as shall be retained in service) may repair in harvest of hay or corn into any other county or place for the only mowing, reaping and getting of hay, corn or grain, and for the only working of harvest works, as they might have done before the making of this act. *f.* 23.

Leaving work unfinished.

Every artificer and labourer that shall be lawfully retained in and for the building or repairing of any church, house, ship, mill, or other piece of work taken in great, in task or in gross, or that shall take upon him to make or finish any such work, shall continue and not depart from the same, unless it be for not paying of his wages or hire agreed on, or otherwise lawfully taken and appointed to serve the king, or for other lawful cause, or without licence of the master or owner of the work, or of him that hath the charge thereof, before the finishing of the said work, on pain of imprisonment for a month without bail or mainprize; and the forfeiture of 5*l.*

to the party from whom he shall so depart, for the which the said party may have his action of debt in any of the king's courts of record, over and above such ordinary costs and damages as may or ought to be recovered by the common laws for such offence. 5 *El. c. 4. f. 13.*

And no other artificer or labourer, retain'd in any service, to work for the king, or any other person, shall depart until the work be finished, if the person so retaining him so long will have him and pay him his wages, on pain of imprisonment for one month. *f. 14.*

Testimonial.

None of the said persons retained in husbandry, or otherwise, after the time of his retainer expired, shall depart from one place to another without a testimonial of the constable, or other head officer, and two householders; which testimonial shall be in this form:

Memorandum, that A. B. late servant to C. D. of E. husbandman, or taylor, &c. in the said county, is licensed to depart from his said master, and is at his liberty to serve elsewhere, according to the statute in that case made and provided. In witness whereof, &c.

Which testimonial shall be delivered to the said servant, and also registred by the minister of the parish where the master dwells, taking 2*d.* for the same. 5 *El. c. 4. f. 10.*

And no person that shall depart out of a service, shall be retained in any other service without shewing such testimonial, on pain of imprisonment 'till he procure one; which if he can't do in 21 days, he shall be whipped as a vagabond; and every person retaining such servant without shewing such testimonial,

Servants.

testimonial, shall forfeit 5 *l.* half to the king, and half to him who shall sue. *f.* 11.

☞ And, as the ingenious Mr. BURN observes, it were to be wished, that this good law concerning the testimonial was enforced and executed; the want whereof is the only adequate cause of the excessive dearness and insolence of servants, which is so universally complained of, because it renders all rating of wages utterly vain and ineffectual; for if the wages are limited in one shire, the effect of that is no more than driving the servants into another shire where the wages are not rated: Which can only be prevented by a general concurrence in not suffering them to depart, or not receiving them without such licence or testimonial.

Servant fleeing into another shire.

If any servant flee into another shire, the justices, and mayors, or other head officers being justices, may issue writs of *capias* to take his body, returnable before them at their pleasure, and imprison him 'till he finds surety for his good behaviour. 5 *El. c.* 4. *f.* 47.

And by the 24 *G. 2. c.* 55. If a justice shall issue his warrant for the purpose last mentioned, the constable or other person, on having the warrant indorsed by a justice in such other shire, may arrest him there, and carry him before a justice in such other shire, if the offence is bailable to find bail, or else shall carry him back before a justice in the shire from whence the warrant did first issue.

Servant assaulting his master.

If any servant, workman or labourer, shall assault his master or mistress, or any other having oversight

oversight of such servant, or his work, and shall be thereof convicted before any two justices, or other head officer, by confession, or oath of two witnesses, he shall be imprisoned for a year, or less, by the discretion of two justices out of a town corporate, and in a town corporate of the mayor or other head officer, with two others of the discreetest persons of the same corporation: And if the offence shall require further punishment, then to receive it openly, as the justices, mayor, or other head officer, and four of the discreetest persons of the corporation, shall think fit. 5 El. c. 4. s. 21.

How far the master is allowed to beat his servant.

The master is allowed by law to chastise his servant moderately. *Dalt. c. 58.*

And where a master in correcting his servant occasions his death, it shall be deemed homicide by misadventure; yet if in his correction he exceeds all moderation, and thereby occasions his death, it is manslaughter at the least; and if he make use of an improper instrument, it is murder. 1 *Haw. 73, 74.*

And if the servant departs from his master's service, and the master after shall lay hold on him, he shall not in this case beat or forcibly compel him against his will to stay with him; but either he must complain to the justices, for his servant's departure, or may have an action of covenant against him. *Dalt. c. 121.*

How far the master may beat another in defence of his servant, or the servant in defence of his master.

According to some opinions a master shall not forfeit a recognizance of the peace for beating another in defence of his servant, nor the servant for beating another in defence of his master. 1 *Haw.* 131.

But in the case of *Leeward and Basilee, M. 7 W.* It was held by the court, that a servant may justify an assault in defence of his master, but not a master in defence of his servant; because he might have an action for the loss of his service. 1 *Salk.* 407.

Servants firing houses.

If any servant, thro' negligence or carelessness, shall fire, or cause to be fired, any dwelling house or outhouse, and be convicted thereof by oath of one witness before two justices, he shall forfeit 100*l.* to the churchwardens, to be distributed among the sufferers by such fire; and on non-payment of the same immediately, he shall be committed to the house of correction for 18 months, to be kept to hard labour. 6 *Ann. c.* 31. *f.* 3.

Servant stealing his master's goods.

By 21 *H. 8. c.* 7. *If any servant, to whom any goods shall by his master or mistress be delivered to be kept, shall go away therewith, to the intent to steal the same; or, being in his master's or mistress's service, without his or her assent shall imbezil, or otherwise convert the same to his own use, with like*

purpose

purpose to steal it, if the same be of the value of 40s. or above, he shall be guilty of felony; but this not to extend to any apprentice, or any person within the age of 18 years.

By his master or mistress.] If the master's wife delivers goods of the master, to the servant to keep, and he goes away with them, it seems this is within the statute, for he hath them by delivery of his mistress; and the master's wife is as well his mistress, as if she were sole. 1 H. H. 668.

Be delivered to be kept.] This statute was introductive of a new law, when the goods were actually *delivered* to the servant that goes away with them; for where there is such a delivery, it could not at the common law be a felony. 1 H. H. 667.

But yet a servant may be guilty of felony at common law, if he *take* the goods of his master feloniously, nay, tho' they be goods under his charge; as a shepherd, butler, and the like; and for this he may be indicted at this day as a felony at common law; and of this felony at common law an apprentice, or servant under the age of 18 years, may be guilty, and indicted thereof at common law. 1 H. H. 667.

And therefore tho' this statute exempt an apprentice or servant under 18, from the pain of felony enacted *de novo* by this statute, namely, where goods are actually delivered to him, yet it leaves him in the same condition as to any felony at common law as if he were not excepted; and therefore if a butler or shepherd under the age of 18 years, or if an apprentice, take away his master's goods feloniously, without an actual delivery, tho' they are under the value of 40s. he is indictable of felony at common law. 1 H. H. 667, 668.

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If a man delivers to his servant the key of his chamber door, and the servant taketh away his master's goods in the chamber, (above the value of 12*d.*) this is felony at the common law, for the goods were *not delivered*. *Dalt. c. 155.*

If a man appoints his servant to take and carry corn to market, and to take his horse to carry the same upon, and the servant goeth away with the corn or horse; this is felony in the servant, if the goods he so goeth away with be all to the value of 40*s.* *Dalt. c. 155.*

But if the servant wastefully consumeth the goods, and returneth again to his master, this is no felony. *Dalt. c. 155.*

If the master deliver an obligation to his servant to receive the money thereby due, and the servant receive the money, and goeth away with the same, with intent to steal it; this is no offence within this statute, because he had not the money of the delivery of his master. 3 *Inst. 105.*

So if the master deliver to his servant wares or merchandizes to sell, and he sells the same, and goes away with the money as before, this is sufficient within this statute for the cause aforesaid. 3 *Inst. 105.*

So if the servant receives above 40*s.* of his master's rents and runs away therewith, it is no felony, for the statute is where the master delivers it to keep. *Dalt. c. 155.*

But it is held, that if the master deliver to the servant 20*l.* in silver to change it into gold at the goldsmiths, or leather to make shoes, and he runs away with the gold or silver, it is felony. 1 *H. H. 668.*

Shall be guilty of felony.] But not without benefit of clergy. But by the 12 *An. st. 1. c. 7.* Every person who shall steal goods to the value of 40*s.* out of any dwelling house, altho' it be not broken

broken open, shall be guilty of felony without benefit of clergy: But this not to extend to apprentices under 15 years of age.

And in *Josbua Cornwall's* case, *M. 4 G. 2.* It was adjudged, that a servant may be guilty of burglary with respect to his master's goods, altho' he did not break and enter, nor take, nor carry the goods away. Which was thus: The servant in the night opened the street door, and let in the thief, and shewed him the side board from whence he took the plate; then the servant opened the door, and let him out, but did not go out with him, but went to bed. Upon the trial it was doubted whether this was burglary in the servant, he not going out with the other; wherefore it was ordered to be found specially. And afterwards at a meeting of all the judges at *Serjeants-Inn*, they were all of opinion that it was burglary in both; and upon report of the opinion the next sessions, the defendant was executed. *Str. 881.*

Disputes between silkmasters and their workmen.

By the 13 & 14 C. 2. c. 15. Every silk-winder and doubler, who shall unjustly, or deceitfully and falsely purloin, imbezil, pawn, sell or detain any part of silk delivered to them to wind or double, in every such case as well the winder or journey-man so offending, as the buyer and receiver thereof, being lawfully convicted by confession, or oath of one witness before one justice, (or mayor) shall render to the party grieved such satisfaction for his damage, loss and charges, as the justice shall order. *f. 6.*

But no more damages shall be given than the party grieved shall prove he is damnified, and hath expended; and if the party shall not be able, or do not make recompence in 14 days after con-

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viction, he shall for the first offence be apprehended and whipped, or set in the stocks where the offence was committed, or in some market-town near in the said county; and for the second offence to incur the like or such further punishment by whipping, or being put in the stocks, as such justice shall think convenient. *f. 7.*

And by the 20 C. 2. c. 6. If any silk-winder or doubler shall be found faulty in unjustly, deceitfully or falsely purloining, imbezilling, pawning, selling, or detaining any silk committed to his trust, any justice or mayor shall immediately on conviction, by confession, or oath of one witness, commit him to prison, or house of correction, 'till satisfaction be given to the party wronged, or punishment inflicted, as by the 13 & 14 C. 2. is appointed.

And by the 8 & 9 W. c. 36. Every person that shall embezel, pawn, sell, or detain any silk delivered to him to be wrought, or after it is wrought up, and also the receiver and buyer thereof, or such as take the same to pawn, shall be subject to all the penalties of the 13 & 14 C. 2. c. 15. and the 20 C. 2. c. 6.

Disputes between clothiers and their workmen, by divers statutes.

By the 4 Ed. 4. c. 1. Clothmakers shall pay to the carders and spinsters, and other labourers, their wages in money, and not in goods, and deliver wool to them to be wrought according to the due weight thereof; on pain of forfeiting treble value of the wages, and for every delivery of excessive weight 6 *d.* *f. 5.*

And every carder, spinster, weaver, fuller, shearman and dyer, shall duly perform his duty in his occupation, on pain of double damages to the party 'grieved. *f. 6.*

And

And every justice of the peace, mayor, master, warden, bailiff, constable of hundred, and steward of leet, may hear and determine the same, and commit the offender to the next gaol, 'till the said duties, forfeitures and damages be paid. And any person not grieved may inform; in which case the offender shall forfeit to the king, or to such person as shall be intitled to fines or amerciaments, 3 s. 4 d. and they may grant like process as justices of the peace may do for surety of the peace, without any fee to be taken for the execution of their offices in this behalf. *f. 6.*

By the 7 *J. c. 7.* Every sorter, carder, kember, spinster and weaver, who shall unjustly, falsely or deceitfully, convey, imbezil, sell or detain any part of the wool or yarn delivered by any clothier, maker of bays, says, or by any other person making such cloths or stuffs, and also the buyer and receiver thereof knowing the same, being thereof convicted by confession, or oath of one witness, before two justices, or before the mayor and one of the aldermen, or most substantial persons of a town corporate, shall make such satisfaction for damages as the said justice or chief officers shall appoint; and if the offender shall not by them be thought sufficient, or do not make such satisfaction, he shall for the first offence be apprehended and whipped, or set in the stocks where the offence is committed, or in some market town near in the same county; and for the second offence shall incur the like or such further punishment by whipping, or being put in the stocks, as the said justices or chief officers shall think convenient. *f. 2.*

And every spinner that shall receive any wool to be spun into yarn for any clothier dwelling in *Coggeshall, Bocking, Braintree, Halsted, Witham* or *Colebeffer*, and shall deliver back the yarn by

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any reel shorter than two yards about, shall be subject to the like punishment. *f. 4.*

By the 10 *Ann. c. 16.* Every clothier, cloth-worker, cardmaker, or other woollen manufacturer, shall pay his workmen in money, and not in goods; on pain of 20*s.* on conviction in 30 days before one justice, on oath of one witness; half to the informer, and half to the poor, to be levied by distress by the constable; and in case no sufficient distress can be had, to be committed to gaol, to be kept to hard labour not exceeding three months. *f. 6, 7, 8.*

By the 1 *G. 2. c. 15.* Every clothier, cloth-maker, cardmaker, or other woollen manufacturer, shall pay his workmen in money, and not in goods; on pain of 40*s.* in 40 days; to be disposed of, if in *London*, to *Christ's hospital*, elsewhere to the poor where the offence shall be discovered; and if he shall not pay in 30 days, to be levied by distress; and where no sufficient distress, to be committed to gaol or house of correction to hard labour for three calendar months. *f. 7, 8, 12.*

By the 12 *G. c. 34.* If any person break into any house or shop with intent to cut any serge, or other woollen goods in the loom, or any tools, or cut or destroy the same, or shall burn, cut or destroy any rack on which any woollen goods are hanging to dry, or break or destroy any tools used in making such goods, he shall be guilty of felony without benefit of clergy. *f. 7.*

By the 13 *G. c. 23.* It shall not be lawful for any maker of mixed, medley or white cloth, to use any bars called warping bars, but only such of the measure and length following, that is to say, — every long warping bar shall be three yards and three inches long, and no more; and every round warping bar four yards and four inches round, and no more; the said three inches on

on the long bar, and the four inches on the round bar, being in lieu of the over measure usually allowed in cloths; and also that the thrums at the ends of the warping bars shall not exceed 18 inches in length; and if any maker of such cloth shall use any warping bar of other length or measure, or with other thrums, he shall forfeit 10 *l.* *s.* 1.

Every maker of such cloth, or goods mix'd with wool, shall give out all wool, &c. by weight at 16 ounces to the pound, and receive back the same at the same weight, on pain of 5 *l.* *s.* 2.

Offences against this act determinable by two justices, on information on oath within three calendar months, who shall levy the penalties by distress; half to the informer, and half to the poor; for want of distress, to be committed to gaol not exceeding three months, or until satisfaction be made. *s.* 4.

And all disputes touching woollen manufactures to be determined by two justices, who shall on complaint summon the parties, and hear and examine on oath, and give such satisfaction, and such costs and damages, as shall be reasonable to be made and paid, within 10 days; and in default, the party to be committed to gaol or house of correction not exceeding three months, or 'till satisfaction be made. *s.* 5.

By the 29 G. 2. c. 33. If any clothier, sergemaker, woollen or worsted stuff maker, worsted or woollen yarn stocking maker, or person concerned in making any woollen cloths, serges, stuffs, worsted or woollen yarn stocking, or any other person any way concerned for himself or another in employing weavers, combers of jersey, or wool worsted combers, spinners, knitters, or other labourers in the woollen manufactures, shall pay any person his wages in goods, or by way of truck, bill or note, or in any other manner than in money; he shall on prosecution in 3 months,

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forfeit 20 l. to be recovered by action of debt by any person who shall sue for the same, — Or otherwise before two justices by confession, or oath of one witness, by distress, (if not paid within 14 days;) and to be distributed, half to the informer, and half to the poor; and for want of sufficient distress, to be committed to the house of correction for any time not exceeding three months, or until satisfaction shall be made. Persons aggrieved by the order of two justices may appeal to the next sessions, first entering into recognizance with sufficient surety before the justices, to prosecute and abide by the order that shall be made on such appeal, and giving eight days notice in writing to the party in whose favour the order was made. And the sessions may award costs and damages, and by their order or warrant may levy such costs and damages by distress; and for want of sufficient distress, may commit the party to the common gaol not exceeding three months, or 'till satisfaction be made. And the order of sessions shall be final: And no proceedings of the justices out of, or in the sessions, shall be removed by *certiorari*, or otherwise.

And by the 30 G. 2. c. 12. If any clothier, or maker of any mixed, medley, or white broad cloth, shall refuse or neglect to pay to the weaver employed by him his wages or price agreed on, in money, within two days next after the work shall be performed and delivered to such employer, or some person on his behalf, (the same being demanded of such employer or person employed on his behalf;) every such clothier or person so offending shall forfeit 40 s. to be recovered and disposed of as by the said act of the 29 G. 2. c. 33.

Disputes between masters and servants in the woollen, linen, fustian, cotton, and iron manufactures, by the 1 An. st. 2. c. 18. and 13 G. 2. c. 8.

By the 1 An. st. 2. c. 18. If any person employed in the woollen, linen, fustian, cotton, or iron manufactures, shall imbezil any wefts, thrums, or ends of yarn, or any other materials of wool, hemp, flax, cotton or iron, or shall reel short or false yarn, and shall be convicted by oath of one witness, or confession, before one justice, he shall forfeit double the value of the damages: And if he shall neglect or refuse to pay the same, the justices shall commit him to the house of correction until satisfaction shall be made: And if it shall appear to the justice that he is not able to make satisfaction, he shall be there publicly whipped and kept to hard labour not exceeding 14 days.

§. 1.

And every person buying or receiving any wefts, thrums, or ends of yarn, or other materials of wool, hemp, flax, cotton or iron, shall suffer in like manner. *§. 2.*

And all payments to the said workmen shall be in money.

And all wages, demands, frauds and defaults of labourers, shall be determined by two justices, who may summon and examine the witnesses upon oath. Liberty is given for the person aggrieved to appeal to the sessions to be holden next after notice of the order of the said two justices. *§. 4.*

And by the 13 G. 2. c. 8. If any person employed in the working up any woollen, linen, fustian, cotton, or iron manufactures, shall embezil, sell, pawn, or otherwise illegally dispose of any of the materials, or shall reel short or false yarn,
and

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and shall be convicted thereof, as by the 1 *Ann.* *§. 2. c. 18.* he shall forfeit double value of the damages, together with such costs as the justice shall judge reasonable, and if not paid immediately, the said justice shall cause him to be committed to the house of correction, to be whipped and kept to hard labour not exceeding 14 days; and for a second or other subsequent offence for such embezzling or purloining, he shall forfeit four times the value of the damages, together with such costs as the justice shall judge reasonable, and if not paid immediately, then such or any other justice shall cause him to be committed to the house of correction, to be kept to hard labour for any time not exceeding three months, nor less than one month; and also during the time of such commitment shall cause him to be publicly whipped in the market town where he shall be committed, at the market place or cross, once or oftner, as to such justice shall seem reasonable. *§. 1.*

And the receivers of the same shall be subject to the like penalties. *§. 1.*

And the forfeitures by both these acts shall be half to the party injured, and half to the poor, with the like liberty of appealing on this act as on the 1 *Ann. Same stat. §. 3.*

Disputes between masters and their workmen in the leathern manufactures, by the 13 G. 2. c. 8.

If any person employed in cutting, paring, washing, dressing, sewing, making up, or otherwise manufacturing of gloves, breeches, leather, skins, boots, shoes, slippers, wares, or other goods or materials to be made use of in any the said employments, or in any branch or particular thereof,

thereof, shall fraudulently purloin, embezel, se-
cure, sell, pawn or exchange all or any part of
the gloves, breeches, leather, skins, parings, or
shreds of gloves, or leather, boots, shoes, slippers,
or other the said wares, either before or after they
shall be made into wares, and be thereof con-
victed by the oath of the master or owner, or
other credible witness, or confession before one
justice where the offence shall be committed, or
the offender reside; such justice may award him
to satisfy the party injured, not exceeding double
the value of the goods so purloined; half to the
party grieved and half to the poor, with costs, to
be levied by distress and sale; and in default of
distress or payment, to be committed to prison for
14 days, and whipped at the discretion of the ju-
stice; and for a second or other subsequent of-
fence, he shall forfeit four times the value of the
damages with costs, as the justice shall judge rea-
sonable; and if not paid immediately, to be im-
prisoned not exceeding three months, nor less than
one month, and be publickly whipped once or
oftener, at the discretion of the justice. *f. 4.*

And every person who shall knowingly receive
any of the said goods, he shall on like conviction
make such recompence in two days, or else be
subject to such distress and punishment as the per-
sons so purloining, &c. as above. And so in like
manner for the second and every subsequent of-
fence. *f. 5.*

And all payments to workmen employed in the
said manufactures shall be in money, and not in
goods, except by their own request and consent;
and all materials delivered out to be wrought in
such manufactures shall be delivered with a decla-
ration of the true weight, quantity or tale there-
of; on pain of forfeiting to such manufacturer
double value of what shall be due for his work;
and if such labourer or manufacturer shall be
guilty

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guilty of any fraud, or default in the work by him undertaken to be done, he shall answer to the owner double damages. *f. 6.*

And all wages, demands, frauds, abuses, neglects and defaults of labourers and manufacturers in the said trades concerning any work done in such manufacture, shall be determined by two justices, who may summon and examine witnesses upon oath. *f. 7.*

Moreover, every person retained or employed in making up any the said manufactures for any one master, and neglecting the performance thereof, either by procuring or permitting himself to be subsequently employed by any other master before he hath compleated the work, shall on conviction by oath of one witness, before one justice, be sent to the house of correction, to be kept to hard labour not exceeding one month. *f. 8.*

Persons aggrieved by any order of the said two justices may appeal to the next sessions, giving eight days notice; and the sessions may award costs to either party. But no order of such two justices shall be appealed against or quashed for want of form only. *f. 9.*

Disputes between masters and their workmen in the making of hats, or in the woollen, linen, fustian, cotton, iron, leather, furr, bemp, flax, mohair, or silken manufactures, by the 22 G. 2. c. 27.

If any person hired or employed to make up any felt or hat, or to prepare or work up any woollen, linen, fustian, cotton, iron, leather, furr, hemp, flax, cotton, mohair or silk, or of any the said materials mixed one with another, shall purloin,

loin, embezel, or otherwise unlawfully dispose of any of the materials with which he shall be intrusted, whether the same be or be not first wrought up, or shall reel short or false yarn, and be convicted thereof by the oath of the owner, or other credible witness, or confession, before one justice where the offence shall be committed, or the party shall reside, he shall be committed to the house of correction, or other publick prison, to be kept to hard labour for 14 days, and to be once publickly whipped at the market place, or other publick place where he shall be committed; and for a second or other subsequent offence, he shall be committed in like manner for any time not exceeding three months, nor less than one month, to be kept to hard labour, and also to be publickly whipped twice or oftner. *s. 1.*

And if any person shall be convicted as aforesaid of buying, receiving or taking by way of gift, pledge, sale or exchange, or in any other manner, from any person whom he knows to be employed to make or prepare any the said manufactures, any thrums or ends of yarns, or any other materials of wool, furr, hemp, flax, cotton, iron, or any leather, mohair or silk, whether the same be or be not first wrought up, the consent of the employer not being first had; or of buying or receiving in any manner whatsoever from any other person any of the said materials, whether the same be or be not first wrought up, knowing them to be purloined or embezilled, he shall for the first offence forfeit 20*l.* and if not paid immediately, the justice shall commit him to the house of correction, or other publick prison, to be kept to hard labour for 14 days, unless the forfeiture be sooner paid; and if it be not paid in two days before the expiration of the term, he shall be publickly whipped at the market place, or other publick place of the town, once or oftner,

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as the justices shall order; and for a second or other subsequent offence he shall forfeit 40 *l.* and if not paid immediately, he shall be committed in like manner, to be kept to hard labour not exceeding three months, nor less than one month, unless the forfeiture be sooner paid; and if it be not paid in seven days before expiration of the term, he shall be publickly whipped twice or oftener, as the justice shall order: And the said forfeitures, after satisfaction made thereout to the party injured, with such costs as shall be adjudged by the justice, shall be equally distributed among the poor of the parish where the offender shall reside. *s. 2.*

Persons convicted of buying or receiving any the said materials may appeal to the next sessions, in which case the execution of the judgment shall be suspended, the person entering into a recognizance before the justice at the time of the conviction with two sureties in double the sum adjudged, to prosecute the appeal, and to be forthcoming to abide the determination of the justices in the said sessions; and the sessions may award costs to either party; and if the judgment be affirmed, the appellant shall immediately pay the sum adjudged with costs; or in default thereof shall suffer the penalties before directed. *s. 3.*

And if any person shall be convicted of purloining or embezzling any the said materials, or of buying or receiving the same in manner before described, the justice before whom the conviction shall be may issue his warrant to any person, empowering him in the presence of a constable to enter into and search in the day-time the houses and other places belonging to such person, and to bring such materials as shall be found before the said justice, to be kept in custody by him; and if in 24 days it shall be made appear to the justice, that the person from whose house
the

the said materials shall be so taken is the lawful owner, they shall be restored to him; otherwise they shall be deemed to be purloined or embezzled, and shall be publickly sold, and the money arising thereby (charges of sale being first deducted) shall be equally distributed amongst the poor of the parish where the person convicted shall reside. *f. 4.*

And the said justice shall, within three days after such materials shall be brought to him, give notice thereof in writing under his hand and seal to the person convicted, appointing a time and place for his attending to prove his property therein; which shall be within 21 days, and not less than 18 days after such notice, and if such person be in any house of correction, or other prison, the justice shall cause a copy of the said notice, attested under his hand and seal, to be delivered to the keeper; who shall bring the said person at the time and place specified, on pain of forfeiting to the prisoner the full value of the said materials, by distress and sale, by warrant of the said justice, if not paid immediately. *f. 5.*

If any person shall be aggrieved by the judgment of the justice, relating to the sale of the materials, he may appeal to the next sessions, and in the mean time the sale shall be postponed; a written notice under the hand of the appellant, signifying his intention to appeal, being given to the justice before the time appointed for the sale; and if the appellant shall not prosecute the appeal, or the judgment shall be affirmed, the sessions may award costs to the defendant. *f. 6.*

And if any person shall not make use of the whole of the materials, and shall not return the remainder in 21 days, (if required by the owner) this shall be deemed embezzling and purloining. *f. 7.*

And

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And upon complaint on oath of any offence against this act to any one justice, he shall issue his warrant for bringing the offender before him, or any other justice, who shall hear and determine the same. *s.* 8.

And if any person shall be employed to work up any of the said manufactures for any one master, and shall neglect or refuse the performance thereof, by permitting himself to be subsequently retained by any other person before he shall have compleated the same; he shall on conviction, on the oath of one witness before one justice, be sent to the house of correction, to be kept to hard labour not exceeding one month. *s.* 9.

But this statute shall not repeal the 13 *§* 14 C. 2. nor the 20 C. 2. nor the 8 *§* 9 W. before mentioned. *s.* 10.

Moreover, all contracts or agreements, and all by-laws, rules and orders, made in any unlawful clubs and societies by any persons employed in any woollen manufacture, or in the making of felts or hats, or in any manufacture of silk, mohair, furr, hemp, flax, linen, cotton, fustian, iron or leather, or in any manufactures made up of wool, furr, hemp, flax, cotton, mohair or silk, or any of the said materials mixed one with another, for regulating any of the said trades, or for settling the prices of goods, or for advancing their wages, or for lessening their usual hours of work, shall be void: And if any such person shall be concerned in any such combination, he shall on conviction in three calendar months, on the oath of one witness before two justices, be committed to the house of correction, to be kept to hard labour not exceeding three months, or to the common gaol not exceeding three months. *s.* 12.

And if any such person shall depart from his service before the end of the term, or shall quit or return his work before it be finished, unless for
some

some reasonable cause to be allowed by two justices; he shall on the like conviction before two justices be committed to the house of correction, to be kept to hard labour not exceeding three months. *Same.*

And if any such person shall wilfully damnify, spoil or destroy, without consent of the owner, any work committed to his charge, he shall, on conviction as aforesaid, forfeit to the owner double value, by distress and sale by warrant of two justices; and for want of sufficient distress, to be committed to the house of correction, to be kept to hard labour for any time not exceeding three months, or 'till satisfaction be made. *Same.*

And every such master shall pay his workmen in money, and not otherwise, and shall not make any deduction on account of any goods sold or delivered previous to the agreement. And for the more easy recovering the said wages, two justices upon complaint (in three months, 13 G. c. 23.) shall summon the party offending, and for non-payment shall issue their warrant to levy the same by distress and sale; and for want of sufficient distress, shall commit the offender to gaol for six months, or until he shall pay or give full satisfaction for the same, to the good liking of the party grieved. *Same.*

And every person paying the same, otherwise than in money, shall forfeit 10*l.* half to the informer, and half to the party grieved, by distress and sale as aforesaid. *Same.*

Persons aggrieved by order of two justices may appeal to the next sessions, giving reasonable notice; the reasonableness of which notice shall be determined by the justices at the said sessions; and if reasonable time of notice was not given, they shall adjourn the appeal to the next sessions after; and the sessions may award costs to either party. *Same.*

Moreover,

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Moreover, if any person shall assault or abuse any master, or other person concerned in any of the said manufactures, whereby he shall receive any bodily hurt for not complying with any such illegal by-laws, rules or orders; or shall write or cause to be written, or knowingly send or cause to be sent any letter, writing or message, threatening any harm to any such person, or threatening to burn, pull down or destroy any of his houses, or cut down any of his trees, or to maim or kill any of his cattle, for not complying with any demands of his workmen, or for not conforming to any such illegal by-laws, rules or orders; he shall on conviction by indictment in 12 kalendar months be guilty of felony, and transported for seven years. *Same.*

Disputes between masters and their workmen in the manufacture of clocks and watches, by the 27 G. 2. c. 7.

If any person employed by any one practising the trade of clock-making or watch-making, or any part or branch thereof, to make, finish, alter, repair or clean any clock, watch, or part thereof; or intrusted by any person practising the said trade or trades, with any gold, silver, or other metal or material, to be or that shall be, in the whole or in part, wrought or manufactured for any part of a clock or watch, or any diamond or other precious stone, to be, or that shall be, set or fixed in or about any clock or watch; shall purloin, embezel, secret, sell, pawn, exchange or otherwise unlawfully dispose of any clock, watch, gold, silver, or other metal or material, or any part thereof, or any diamond, or other precious stone, with which he shall be so intrusted; and shall be thereof convicted by the oath of the
owner

owner or other credible witness, or confession, before one justice where the offence shall be committed, or the person so charged shall reside, he shall for the first offence forfeit 20 *l.* and if not forthwith paid, the justice shall commit him to the house of correction, or other publick prison, there to be kept to hard labour for the space of 14 days, unless the forfeiture shall be sooner paid; and if within two days before the expiration of the said 14 days such forfeiture shall not be paid, the justice may order him to be publickly whipped at the market place, or some other publick place of the city, town or place where he shall be committed; and for a second or other subsequent offence he shall forfeit 40 *l.* in like manner, and if not paid forthwith, the justice shall commit him as aforesaid, to be kept to hard labour for any time not exceeding three months, nor less than one month, unless the forfeiture shall be sooner paid; and if within seven days before the expiration of the time for which he shall be committed, the forfeiture shall not be paid, the justice may order him to be whipped in like manner twice or oftener, as to such justice shall appear reasonable.

And if any person shall buy, receive, accept or take, by way of gift, pawn, pledge, sale or exchange, or in any other manner, of or from any person whomsoever, any clock or watch, or part thereof, or any gold, silver, or other metal or material as aforesaid, whether the same, or any part thereof, be or be not wrought or manufactured, or any such diamond, or other precious stone, knowing the same to be so purloined or embezzled; he shall on the like conviction for the first offence forfeit 20 *l.* and if not forthwith paid, the justice shall commit him in like manner, to be kept to hard labour for 14 days, unless the forfeiture shall be sooner paid; and if within

two

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two days before the expiration of the said 14 days the said forfeiture shall not be paid, the justice shall order him to be publicly whipped as aforesaid, once or oftener, as such justice shall think reasonable; and for a second or other subsequent offence he shall forfeit 40*l.* and if not forthwith paid, the justice shall commit him as aforesaid, to be kept to hard labour for any time not exceeding three months, nor less than one month, unless the forfeiture shall be sooner paid; and if within seven days before the expiration of the time for which he shall be committed the forfeiture shall not be paid, the justice shall order him to be publicly whipped as aforesaid twice or oftener, as to him shall appear reasonable.

And one justice, on complaint to him made upon oath of any offence against this act, may issue his warrant for apprehending and bringing before him, or before any other justice of the same place, the person so charged.

If any person shall think himself grieved by the judgment of the justice, he may appeal to the next sessions; in which case the execution of the judgment shall be suspended, the person so convicted entering into a recognizance with two sureties in double the sum adjudged, to prosecute the appeal with effect, and to be forthcoming to abide the judgment and determination of the justices in such sessions; and the justices there shall hear and determine the same, and award such costs to either party as to them shall appear just and reasonable: And if the judgment shall be affirmed, the appellant shall immediately pay the sum adjudged, together with such costs as shall by the court be awarded; or in default thereof, shall suffer the penalties as for purloining, embezzling or receiving, as aforesaid.

The said forfeitures, after satisfaction made thereout to the party injured, together with such costs

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costs of prosecution as the justice shall judge reasonable, shall go to the use of the poor where the offender shall reside.

And the justice shall cause the conviction to be fairly written upon parchment, and transmitted to the next sessions, there to be filed and kept amongst the records. And the same shall not be removed by *certiorari*.

Disputes between masters and servants in husbandry, artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers, by the 20 G. 2. c. 19.

By construction of law upon the statute of the 5 *Elix.* the justices had a power of compelling the payment of the wages, which they had rated and assessed; but the said statute being deficient in two material points, to wit, in extending only to such wages as should be rated, and to servants in husbandry only; and moreover there being therein (as hath been observed) no power to admit the servant's oath as evidence, therefore by the 20 G. 2. c. 19. it is enacted as follows;

All complaints, differences and disputes between masters or mistresses and servants in husbandry, hired for a year or longer, or between masters and mistresses and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers, employed for any certain time, or in any other manner, shall be determined by one justice, where the master or mistress shall inhabit, altho' no rate or assessment of wages has been made that year; which justice shall examine on oath any such servant or other the said servants, or any other witnesses touching such complaint, and make such order for payment

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ment of wages as to him shall seem just and reasonable, provided that the sum in question do not exceed 10*l.* with regard to any servant, nor 5*l.* with regard to any other persons before mentioned; and in case of non-payment for 21 days, such justice may issue his warrant to levy the same by distress and sale. *f. 1.*

And by the said statute such justice, on application or complaint, on oath, by any master, mistress or employer, against any such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter or labourer, concerning any misdemeanor, miscarriage or ill behaviour in such his service or employment, may hear, and determine the same, and punish the offender by commitment to the house of correction, there to remain and be corrected, and kept to hard labour not exceeding one calendar month, or otherwise, by abating some part of his wages, or by discharging such servant, or other the said persons, from their service or employment. *f. 1.*

And in like manner such justice, on complaint or application on oath by any such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, against such master, mistress or employer, concerning any misusage, refusal of necessary provision, cruelty, or other ill-treatment, may summon such master, mistress or employer, to appear before him at a reasonable time to be prefixed in such summons; and he shall examine into the matter of such complaint, whether such master, mistress or employer, shall appear or not, proof being made upon oath of their being duly summoned; and upon such proof being made to his satisfaction may discharge such servant, or other person aforesaid, from his service and employment, which discharge shall be given under his hand and seal *gratis*. *f. 2.*

If

If any person shall think himself aggrieved by such determination, order or warrant of such justice, (except any order of commitment) he may appeal to the next sessions, who may award costs to either party, not exceeding 40*s.* to be levied by distress and sale in manner before mentioned. *f. 5.*

And no *certiorari* shall issue to remove any proceedings hereupon. *f. 6.*

Ship masters and their seamen.

By the 2 G. 2. c. 36. which by the 23 G. 2. c. 26. is continued to March 1764, &c. it is enacted as follows:

It shall not be lawful for any master of a ship bound to parts beyond sea, to carry any seaman or mariner, except his apprentices, to sea without first agreeing with them for their wages, which agreement shall be made in writing, declaring what wages each seaman is to have respectively during the whole voyage, or for the time he shall ship himself for; and also to express the voyage for which the mariner was shipped to perform the same, and to be signed by both parties, on pain that the master shall forfeit 5*l.* for every such seaman to *Greenwich Hospital*, to be recovered on oath of one witness before one justice, who shall issue his warrant to bring such master before him; to be levied by distress and sale, and if no distress can be found, to be committed to gaol 'till he shall pay the same.

Such mariner shall also sign the agreement in three days after he is entred on board.

And if any mariner shall desert, or refuse to proceed on the voyage, or shall desert beyond the seas, after he shall have signed such agreement, he shall forfeit to the owner of the ship the wages due to him.

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And if any mariner shall desert or absent himself after he hath signed such contract, one justice on application shall issue his warrant to apprehend him: And if he shall refuse to proceed on the voyage, then to be committed to the house of correction, to be kept to hard labour not exceeding 30 days, nor less than 14 days.

And if any mariner shall absent himself from the ship without leave of the master, or other officer having charge of such ship, he shall for every day's absence forfeit two days pay to *Greenwich Hospital*.

And if any mariner not entring into the king's service shall leave the ship before he shall have a discharge in writing by the master, he shall forfeit one month's pay, to be recovered and disposed of as herein after is mentioned.

And the masters shall pay the mariners their wages, if demanded, in 30 days after the ships being entred at the custom-house, (unless there is a covenant to the contrary) or at the time they shall be discharged, which shall first happen, deducting the penalties of this act: On pain of paying to each mariner that shall be unpaid 20 s. above his wages, to be recovered as the wages.

But no mariner by entring into or signing such agreement shall be deprived of any means for recovery of wages which he may now use: And the master shall be obliged to produce the contract, and not the mariner; and the master shall deduct out of the wages all the penalties of this act, and enter the same in a book, and make oath, if required, to the truth thereof; which book shall be signed by the master and two principal officers of the ship: Which forfeitures (except forfeiture of wages to the owner on desertion, or refusing to proceed on the voyage) shall be applied to *Greenwich Hospital*, to be paid to the officer in any port who collects the 6 d. a month

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month deducted out of seamens wages for the use of the hospital, which officer shall have power to administer an oath to such master touching the truth of such penalties.

The master deducting the said penalties, and not paying them over in three months, shall forfeit treble to the said hospital, to be recovered as any penalties, for not duly paying the 6*d.* a month.

Nevertheless this act shall not debar any seaman from entring into the king's service, nor shall he forfeit his wages in that case, nor shall such entry be deemed a desertion.

Taylors and their workmen within the bills.

By the 7 G. 3. c. 13. All contracts by or between journeymen taylors within the bills for advancing their wages, or lessening their hours of work, shall be void; and persons entring into such agreement shall on conviction in three months, on oath of one witness before two justices, be committed to the gaol or house of correction for any time not exceeding two months, and the sessions from time to time, upon application, shall appoint the wages and hours of work; which all taylors and their workmen shall observe, on pain of imprisonment, by such justices, for any time not exceeding two months, on prosecution in six days.

And if any journeyman taylor shall depart from his service before the end of his term, or before his work be finished, or shall refuse to enter into work, unless for cause to be allowed by two justices, he shall be sent to the house of correction not exceeding two months.

Taylors allowing greater wages than so limited shall forfeit 5*l.* on conviction in three months; half to the informer, and half to the poor; and

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journeymen taking greater wages shall be sent to the house of correction not exceeding two months.

Persons aggrieved by any order of two justices may appeal to the next sessions, giving six days notice; and the sessions may award costs to either party.

Shoemakers and their workmen within the bills.

By the 9 G. c. 27. If any journeyman shoemaker within the bills of mortality shall be accused by his master of purloining any shoes, or other wares or materials, one justice on oath may summon the party, or issue his warrant to apprehend him; and if the same is proved before him, he shall award satisfaction for damages and charges, and levy the same by distress; and for want thereof shall cause the offender to be whipped, and for a second or other offence, he shall commit him to the house of correction not exceeding one month, nor less than 14 days.

And every person who shall buy, receive or take in pawn the same, shall be subject to the same punishment.

And two justices, on complaint on oath, may issue their warrant for searching in the day-time for goods so purloined, and every person obstructing shall forfeit 10 l. to him who shall sue in two months; and if such goods shall be found they shall be restored to the owner, and cause the offender to make satisfaction for the damages and charges aforesaid, with liberty for persons aggrieved to appeal to the next sessions, giving eight days notice.

How

How far the master is answerable for the servant.

The master is indictable for a nuisance done by his servant; as for throwing dirt in the highways. *L. Raym.* 264.

But nevertheless it seems that the servant also is indictable; for Mr. *Hawkins* says, that a servant is not excused the commission of any crime by the command or coercion of his master. *1 Haw.* 3.

If goods are delivered to the servant of a carrier, and the goods are lost, an action lies against the master. *Wood b.* 1. c. 6.

M. 10 W. Jones and Hart. A pawnbroker's servant took a pawn; the pawner came and tendered the money to the servant; he said he had lost the goods; upon this the pawner brought an action against the master, and it was held well. *2 Salk.* 441.

H. 8 G. Mead and Hammond. The plaintiff, according to the common course of dealing, delivered to the defendant's servant an ingot of gold to assay; and it not being returned, he brought an action against the master; and *Pratt* chief justice directed the jury that the delivery to the servant was sufficient to maintain the action against the master, on proving a subsequent demand and refusal; so the plaintiff had a verdict. *Str.* 505.

M. 8 G. Cary and Webster. The defendant was a clerk of the *South Sea* company, and took in payments. The plaintiff paid him 600*l.* and he paid it over to the company. And by *Pratt* chief justice, no action in this case lies against the servant. If he had not paid it over, the plaintiff would have had his option, either to charge him or the company, as in the common case of payment to a goldsmith's servant, who doth not carry

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it to the account of his master, the party hath an election to go against either: He may charge the servant, because 'till the money is paid over the servant receives it to his use, or he may pass by the servant, and make his demand upon the master, because the payment to the servant is made in confidence of the credit given him by the master. *Str.* 480.

(A) Summons of the master for wages,
on complaint of the servant, on the
20 G. 2. c. 19.

Berks, ff. { To the constable of ——— in the said
county.

WHEREAS information and complaint hath been made unto me ——— one of his majesty's justices of the peace in and for the said county, upon the oath of A. B. of ——— in the said county, husbandman, to be a servant in husbandry to and with him the said C. D. for one whole year, to wit, from Whitsuntide in the year of our lord ——— to Whitsuntide now last past, (or labourer, or artificer, or as the case shall be) for the wages of ——— and accordingly that he the said A. B. hath duly performed the said service; nevertheless that he the said C. D. hath refused, and doth refuse, to pay unto him the said A. B. the wages justly due to him for his said service: These are therefore to command you forthwith to summon the said C. D. to appear before me at ——— in the said county on ——— the ——— day of this present month of ——— at the hour of ——— in the afternoon of the same day, to shew cause why the said wages should not be paid; and be you then there to certify what you shall have done in the premises.
Given

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Given under my hand and seal the ——— day of
——— in the ——— year of the reign of ———

(B) Order for payment of the same.

Berks, ss. **W**HEREAS information and complaint hath been made unto me, ——— one of his majesty's justices of the peace in and for the said county, upon the oath of A. B. of ——— in the said county, husbandman, that he the said A. B. was duly hired by C. D. of ——— in the said county, husbandman, to be a servant in husbandry to and with the said C. D. for one whole year, to wit, from Whitsuntide in the year of our lord ——— to Whitsuntide now last past (or artificer, glassman, labourer, or otherwise as the case shall be) and that he the said A. B. hath duly performed the said service; nevertheless that he the said C. D. did refuse to pay to him the said A. B. the wages justly due to him for such service as aforesaid; and whereas the said C. D. having appeared before me in pursuance of my summons for that purpose, hath not proved to me that the said wages have been duly paid to him the said A. B. as aforesaid, nor hath shewed to me any just cause why the said wages should not be paid, and hath not paid the same; [or, And whereas it duly appears to me as well upon the oath of A. C. constable of ——— aforesaid, as otherwise, that he the said A. C. by virtue of my precept to him directed, did duly summon the said C. D. to appear before me at a certain time and place therein prefixed, to shew cause why the said wages should not be paid; and whereas the said C. D. hath neglected to appear according to the said summons, and hath not shewed any cause as aforesaid;] I therefore having duly examined into the truth and matter of the said complaint, and upon due consideration had thereof do hereby adjudge, determine and order, that he the

I 4

said

Servants.

said C. D. upon due notice thereof, do pay or cause to be paid to him the said A. B. the sum of ——— which appears to me to be just and reasonable to be paid by him the said C. D. to him the said A. B. as and for his wages as aforesaid. Given under my hand and seal the ——— day of ——— in the ——— year of the reign of ———

(C) Warrant of distress to levy the same.

Berks. } To the constable of ———

WHEREAS A. B. of ——— in the said county, husbandman, hath duly complained unto me ——— one of his majesty's justices of the peace in and for the said county, that C. D. of ——— in the said county, husbandman, hath refused to pay unto him the said A. B. the wages justly due unto him for service in husbandry for one whole year, truly and faithfully performed by him the said A. B. to him the said C. D. [or, as the case shall be] And whereas the said C. D. having appeared before me in pursuance of my summons for that purpose, hath not proved to me that the said wages have been paid to him the said A. B. as aforesaid, and hath not shewed any just cause why the same should not be paid; [or, And whereas the said C. D. hath been duly summoned by me to shew cause to me why the said wages should not be paid, but he the said C. D. hath neglected to appear according to the said summons, and hath not shewed any cause as aforesaid;] I therefore the said justice, upon due consideration had thereof, on the ——— day of ——— now last past, by writing under my hand and seal did thereupon determine and order that he the said C. D. should pay to him the said A. B. the sum of ——— which appeared to me to be just and reasonable to be paid by him the said C. D. to him the said A. B.

as

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as and for his wages as aforesaid. And whereas it duly appears to me, that he the said C. D. on the said _____ day of _____ now last past had due notice of my said order, and that due demand of the said sum of _____ was then made of him the said C. D. by him the said A. B. but that he the said C. D. did not then pay, nor hath yet paid, the same, nor any part thereof: These are therefore to command you to make distress of the goods and chattles of him the said C. D. and if within the space of [four] days next after such distress by you made, the said sum of _____ together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattles so by you distrained, and out of the money arising by the sale thereof, that you pay the said sum of _____ unto him the said A. B. returning the overplus upon demand unto him the said C. D. the reasonable charges of taking, keeping and selling the said distress being thereout first deducted. Given under my hand and seal the _____ day of _____ in the _____ year _____

(D) Warrant for a servant on complaint of the master for misbehaviour, on the 20 G. 2. c. 19.

Berks. { To the constable of _____

WHEREAS information and complaint hath been made unto me _____ one of his majesty's justices of the peace in and for the said county, upon the oath of C. D. of _____ in the said county, husbandman, that A. B. of _____ aforesaid in the said county _____ was hired by him the said C. D. to be servant in husbandry to him the said C. D. for our whole year, from Whitsuntide now

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last past until Whitsuntide now next ensuing; and that he the said A. B. hath in his said service been guilty of divers misdemeanors towards him the said C. D. and particularly, (as the case is): These are therefore to command you forthwith to bring the said A. B. before me to answer unto the said complaint, and to be further dealt withal according to law. Given under my hand and seal the ——— day of ——— in the ——— year of the reign of ———

(E) Commitment of the servant thereupon to the house of correction.

Berks, ss. { To the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county.

WHEREAS information and complaint hath been made, (the same as above, reciting the complaint) And whereas in pursuance of the statute in that case made and provided I have duly examined the proofs and allegations of both the said parties touching the matter of the said complaint, and upon due consideration had thereof have adjudged and determined, and do hereby adjudge and determine the said complaint to be true: These are therefore to command you the said constable forthwith to convey the said A. B. to the said house of correction at ——— aforesaid, and to deliver him to the keeper thereof, together with this warrant: And I do hereby command you the said keeper to receive the said A. B. into your custody in the said house of correction, there to remain, and be corrected and held to hard labour for the space of one calendar month, (or for a lesser time) from the date hereof; and for your so doing this shall be your sufficient

sufficient warrant. Given under my hand and seal
the _____ day of _____ in the _____ year of
the reign of _____

(F) Or otherwise he may be punished
by abatement of wages, as follows:

THE same as above to _____ and do here-
by adjudge and determine the said complaint
to be true: I do therefore hereby order as a punish-
ment for the said offence, that the said A. B. shall
abate from his wages to be paid to him by the said
C. D. the sum of _____ and do hereby discharge
the said C. D. from the payment of the said sum of
_____ as part of the wages of him the said A. B.
Given under my hand and seal the _____ day of
_____ in the _____ year _____

(G) Otherwise may be discharged, thus:

_____ And do hereby adjudge and determine the
said complaint to be true: I do therefore hereby or-
der as a punishment for the said offence, that the
said A. B. be discharged, and do hereby discharge
him the said A. B. from his said service, and the
said C. D. from keeping him the said A. B. Gi-
ven under my hand and seal the _____ day of
_____ in the _____ year _____

(H) Summons of the master on com-
plaint of the servant, for ill usage, on
the 20 G. 2. c. 19.

Berks. } To the constable of _____

WHEREAS complaint hath been made unto
me _____ one of his majesty's justices of
the

Servants.

the peace in and for the said county, upon the oath of A. B. of ——— in the said county, labourer, that he the said A. B. was duly hired by C. D. of ——— aforesaid in the said county, husbandman, to be servant in husbandry to him the said C. D. for one whole year, to commence from Whitsuntide now last past, and that he the said A. B. did accordingly at the time aforesaid enter upon, and afterwards until this present time hath continued, and doth continue in the said service: But that he the said C. D. during the said service hath misused him the said C. D. [refused necessary provision, mentioning the particulars]. These are therefore to require you in his majesty's name to summon the said C. D. by shewing unto him this precept, or leaving a true copy thereof at his usual place of abode, to appear before me on ——— at the house of ——— in ——— in the said county at the hour of ——— in the afternoon of the same day, to answer unto the said complaint, and be you then there with this precept to certify what you shall have done in the execution thereof. Given, &c.

(I) Discharge of the servant thereupon.

THE same as before to the end of the complaint ——— And whereas the said C. D. in pursuance of my summons for that purpose, hath appeared before me to answer unto the said complaint, but hath not proved that he is not guilty of the said complaint or charge, but on the contrary it hath been fully and duly proved before me that he the said C. D. is guilty of the several offences so complained of as aforesaid; [or, And whereas it appears to me upon the oath of E. T. constable of ——— aforesaid that he the said E. T. by virtue of my precept to him directed, did duly summon him the said C. D. to appear before me at a reasonable time therein prefixed, to answer unto the said complaint, but

Surveyors, &c.

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but he the said C. D. hath neglected to appear according to the said summons;] I therefore having examined into the truth and matter of the said complaint, and upon due consideration had thereof do hereby adjudge the said complaint to be true, and thereupon do order that the said A. B. be discharged, and do hereby discharge the said A. B. from his said service. Given, &c.

Surveyors, &c.

Of surveyors of the highways, and scavengers, their particular business, &c.

ANY cart, horse or footway, common to all people, is the king's highway; (whether it leads directly to any market town or not) and a nuisance in any of the said ways is punishable by indictment. 6 *Mod.* 255. And if there be an highway in an open field, when the fields are bad in the winter, travellers may go on the outlets of the lands adjoining, being warranted by custom: For the king's subjects are to have a good passage, and such outlets are parcel of the way: 1 *Roll. Abr.* 390. *Dalt.* 198.

What are highways by the law.

A private way is that which leads from a village, &c. to the parish church or fields without any communication with a great road; which is to be repaired by the village or hamlet, and sometimes by a private person; *contra* of highways, the whole parish shall be charged. If such a way be out of repair, every inhabitant may bring an action, and for stopping the way to the church they may have an action on the case. *Ventr.* 208.

What are private ways.

All

How both
repaired of
common
right.

All highways of common right are to be repaired by the inhabitants of the parish in which the way lies; unless there be some special matter to fix the repairs upon others; as where a person by an inclosure freights a highway on both sides, tho' the parish repaired it before, yet now he is obliged to maintain it at his own charge; but if he lays open the inclosure, so that the way remains as it did before, then the parish is to repair it again. *Cro. Car.* 366.

Particular
persons
bound to
repair.

Easter term 7 Jac. 1. It was resolved that all the country ought to repair a highway where no particular persons are bound to repair, because the whole country have their ease and passage by it. *Co. Rep.* 13.

A person may be obliged to repair a highway by tenure of lands; and lands have been often given for the maintenance of highways. *See stat.*

22 Car. 2. A particular person may be bound to repair a highway by prescription; and so may a corporation. *Leach Rep.* 206.

King's com-
mission to
amend high-
ways, &c.

The king by the common law might award his commission for amending the highways and bridges throughout the realm. *Dalt.* 77. And no highways can be changed, &c. without the king's writ of *ad quod damnum*, and licence thereupon on inquiry, whether it will be prejudicial to the publick, &c. *13 Co.* 267.

Surveyors of
the high-
ways ap-
pointed by
statute.

But the statutes ordain, that for the repairs of highways, surveyors shall be yearly chosen in every parish by constables, churchwardens, &c. and the inhabitants thereof; as appears by *2 & 3 P. & M.* c. 8. And by the statute *3 & 4 W. & M.* c. 12. Surveyors of the highways are to be chosen in the following manner.

Surveyors
appointed.

On 26 December yearly, unless it be Sunday, and then on the 27th, the constables, churchwardens, surveyors of the highways, and inhabitants in every parish shall assemble, and the major part
of

of them shall make a list of the names of a competent number of the inhabitants in their parish who have an estate in lands, tenements or hereditaments, in their own or their wife's right, of 10 *l.* a year, or a personal estate of the value of 100 *l.* or are occupiers or tenants of houses, lands, tenements or hereditaments of 30 *l.* a year, if any such there be; or if there be no such persons in the parish, then the said list to be of the most sufficient inhabitants. *3 W. c. 12. f. 3.*

And shall return such list to the special sessions to be held for that purpose within the division on *January 3*, or within 15 days after; of the time and place of which sessions so to be holden the said justices shall give notice to the constables, churchwardens and surveyors, at least 10 days before. *3 W. c. 12. f. 3.*

And if the constables, churchwardens and surveyors, shall not return such list, every of them making default shall forfeit 20 *s.* by distress, by warrant of two of the said justices, or in default thereof of any neighbouring justices. *3 W. c. 12. f. 4.*

And the said justices shall then and there out of the said lists, according to their discretion and the largeness of the parish, by warrant under their hands and seals nominate and appoint, one, two or more, as they shall think fit and approve of, to be surveyor or surveyors of the highways of every parish or town within the division for the year ensuing. *3 W. c. 12. f. 3.*

Which nomination and appointment shall by the constables or surveyors be notified to the person so nominated within six days after such nomination, by serving him with the said warrant, or by leaving the same, or a true copy thereof, at his house or usual place of abode, and from thenceforth he shall be surveyor. *3 W. c. 12. f. 3.*

If he shall not take upon him and execute the office he shall forfeit 5 *l.* in like manner. 3 *W. c. 12. f. 3.*

And in case of such neglect or refusal, the said justices shall appoint others in like manner who shall execute the office, on the like penalty. 3 *W. c. 12. f. 3.*

Special sessions to be held by justices.

The justices shall hold a special sessions in their divisions on the third of *January*, or within 15 days after; of which they are to give 10 days notice to all constables. And they are also to hold a sessions for the highways every four months, under the penalty of 5 *l.* *Stat. 1 Geo. 1. c. 52.*

Proceedings there, *stat. 1 Geo. 1.*

At this sessions the justices may order the reparation of those great roads which most want repairing in the hundred where the sessions is held, which shall be first repaired, and in what time and manner. *Stat. same.*

By surveyors, &c. Presentment.

Surveyors of the highways are within 14 days after the acceptance of their office, and so from time to time every four months, to view the roads, &c. and to present upon oath at the special sessions such ways as are not in repair, or they forfeit 5 *l.* unless two justices shall allow their excuse. *Stat. 1 Geo. 1.*

A presentment of the highways being out of repair.

I *A. B.* surveyor of the highways of and within the parish of, &c. in the county of, &c. do hereby present that the highway leading from, &c. to, &c. in the said parish, is very much out of repair, and dangerous to all travellers who pass that road, and that the inhabitants of the said parish of, &c. ought to repair and amend the same.

Notice of defaults in amending ways.

They are to give publick notice from time to time every four months in the parish church, the next sunday, after sermon ended, of what defaults they find in the reparation of the ways; and if they

they are not amended by those who ought to do it in 30 days, then the surveyors must within other 30 days next following repair the same, and shall be paid the charges by the party who should have done the same.

And in case, when notice is given as aforesaid, Surveyors the party do not repair the highways in the time to repair limited, and if the surveyors do amend them, and and be re- the party neglecting refuseth to pay the charges, paid the charges, then upon oath made of notice, &c. as aforesaid, the surveyors shall be repaid such expences as a justice shall think fit, to be levied by his warrant.

Stat. 3 & 4 W. & M.

Surveyors not giving an account of the defects of highways, and of those who are bound to find labourers and teams, forfeit 5 *l.* except the justices in their special sessions allow a reasonable cause.

Stat. 1 G. 1. c. 52.

They are to take the first seasonable time to repair the ways before harvest; and to appoint fix days for providing materials, carriages, &c. giving notice of the days appointed; at which time all persons liable must work, and the ways are to be amended before the Feast of *St. Luke*.

Justices of peace must particularly express what days are appointed for working on the highways, and not fix days generally between such a time and such a time, which will be naught in an indictment. *East. 2. Ann. K. B. Queen against Kime, 2 Raym. 858.*

Every person in the parish occupying a plough-land in tillage or pasture, and every other person keeping a draught or plough shall send out a wain or cart, furnished with oxen, horses, or other cattle, and two able men every day appointed by the surveyor, upon pain of 10 *s.* for every default. *Stat. 2 & 3 P. & M. c. 8. 22 Car. 2. c. 12.*

If

Penalty.

If all the carriages in the parish shall not be thought necessary by the surveyors, then the person whose carriage is spared is to send out two able men to labour the days appointed, or shall forfeit 1 s. a day for every man not sent. *Same.*

Cottagers, &c. to work.

Every householder, cottager and labourer, being no hired servant, must either work himself for repairs of the highways, or hire a sufficient labourer to work each of the six days, on pain of forfeiting 1 s. 6 d. per day. 22 Car. 2.

Persons and carriages are to be provided with shovels, and other necessary tools, and shall work eight hours in the day. Stat. 22 Car. 2.

Plough-lands in several parishes.

If any man hath a plough-land in several parishes, he shall be chargeable only in the parish where he lives; but if he keep several plough-lands in several parishes, he shall be chargeable in every parish. 18 Eliz. c. 10.

What is a plough-land.

A plough-land was formerly an hundred acres; since 80 acres of land. And by statute 7 & 8 W. 3. c. 29. 50 l. per annum is declared a plough-land.

He who keeps a draught, and but two horses, ought to attend therewith for reparation of the highways. Dalt. 105.

Carts liable to be sent out.

A man keeps a cart for hire, and goes with one or two horses, he must send his cart to the amendment of the highways with as many horses as he goes withal. And brewers, bricklayers, &c. in *Middlesex*, have been adjudged to send so many draughts as they keep. Mich. 27 Car. 2.

Persons keeping coaches.

A person keeping a coach and pair of horses is bound to send out a wain towards the repairs of highways; a coach and horses doing equal damage to the ways as a cart and horses. 1 Lev. 139.

Every draught to work.

If a man keeps draughts in a parish, he is obliged to send a team for each draught, whether he occupy any land in the parish or not; and he who

who occupies several plough-lands, ought in like manner to send teams for each whether he keep any draught or not. *Raym.* 185. 3 *Keb.* 567.

If the owner of lands neither occupy nor let them, but suffer them to lie fresh, he shall be charged as much as if he had occupied them. *Palm.* 389.

Upon default of sending carriages, and work- Defaults.
ing on the highways, &c. the surveyors are to complain to the next justice of peace, who upon oath made of the default will issue out his warrant to levy the forfeitures by distress and sale, &c. to be employed towards amending of the ways.

It is no excuse for the inhabitants of a parish Statute
indicted at common law for not repairing the work not
highways, that they have done the work required sufficient,
by statute; for the statutes are in aid of the com- rates to be
mon law: And when the statute work is not suffi- made.
cient, rates and assessments are to be made. *Dalt.*
c. 26.

Where the statute-work falls short in repairing Assessments
of highways, the justices in their quarter-sessions for repairs
being satisfied thereof, may cause assessments to of high-
be made on every person usually rateable to the ways.
poor, not exceeding 6*d.* in the pound, of the
yearly value of lands, &c. which assessments not
being paid in ten days after demand, may be le-
vied by distress. *Stat.* 3 & 4 *W. & M.* c. 12.
And notwithstanding the six days work have not
been performed, these rates may be made, and
the money disposed of: But the raising money by
assessment shall not excuse the work of any teams
or labourers by law appointed to work on the
ways. *Stat.* 1 *Geo.* 1. c. 52.

And when surveyors have laid out their money Reimbur-
on materials, as stone, sand, &c. in parishes where sing survey-
they have none, for repairing of the highways, ors, &c.
on their making oath before the justices at their
special sessions of what they have expended, two
justices

Surveyors, &c.

justices in the said sessions may by warrant under their hands and seals, cause a rate to be made for reimbursing the surveyors, upon every inhabitant, parson, vicar, and other occupier of lands, tythes, woods, &c. in the parish; which rate being allowed by the said justices in their special sessions, may be levied on persons refusing to pay the same, by distress and sale, &c. Stat. 3 & 4 W. & M.

And two justices of peace in their special sessions may cause a rate to be made for reimbursing a person, where a fine or penalty is levied on him, for the parish's neglect in repairing of the highways.

Persons aggrieved by assessments may appeal to the quarter-sessions, whose order shall be final.

Form of a
rate for re-
pairing of
highways.

A Rate or assessment made on the inhabitants of the parish of, &c. in the county of, &c. for the repairing and amending of the highways in the said parish, the year, &c.

	s.	d.
A. B. esq;	7	0
C. D. gent.	5	0
E. F. yeoman,	5	0
G. H. &c.	6	0

Memorandum, this day and year, &c. the above assessment was allowed and confirmed by us L. M. and J. S. esquires, two of his majesty's justices of peace for the county of, &c. aforesaid: And we do hereby empower L. D. surveyor of the highways in the said parish, to ask, demand and levy the same of the several persons abovementioned, as the act of parliament directs; and if not paid in ten days, to levy the same by distress and sale of their goods. Given, &c.

L. M.

J. S.

The

The statute of the 7 & 8 W. 3. c. 29. enacts, Power of that if the 6d. in the pound ordered by 3 & 4 special sessions in assessing. W. & M. be not sufficient to repair the ways, after the same is levied and employed, the justices in their special sessions held every four months, may order the whole parish to make good the repairs thereof.

Surveyors may take rubbish ready digged in or near any quarry, for repairing of the ways, without leave of the owner, and gather stones in any land without being trespassers: But they cannot dig for stones without consent of the owner. Power of surveyors in taking stones, &c.

5 Eliz. c. 13.

But notwithstanding surveyors may not dig for stones, they may dig gravel in any ground contiguous to the highway; except it be in a garden, orchard, meadow, &c. provided it be but in one pit, not above 10 yards over at most; and that the hole be fill'd with earth at the charge of the parish within a month; not filling up the pit, to forfeit five marks. Same. Digging for gravel.

Surveyors have authority to turn a water-course or spring of water out of a highway into any ditch of the ground adjacent, to make sluices to such ditches, and to make new ditches and drains in and through the lands next adjoining where the old ditches, &c. are not sufficient to carry off the water, and to come upon any of the said lands with workmen for that purpose, and to keep them scoured, &c. Turning water out of the ways, Stat. 5 Eliz.

If any person shall by reason of digging for gravel, or other materials, for repairing any highway, or other purpose, make any pit or hole in any common, &c. he shall cause the same to be fenced off during the time it shall be continued open, and within 14 days after the digging for such materials; shall cause the pit or hole to be filled up, sloped down, or fenced off, and so continued. And in default of so filling up, sloping down Pits or holes made in digging to be filled up.

down or fencing off the same, and keeping the fence from time to time in repair, a justice of peace may order the same to be done by such person; and on refusal to comply with such order in 10 days, the party to forfeit not less than 10 s. nor more than 40 s. as the justice shall direct, and to be applied towards filling up, &c. the pit, &c. as the justice shall direct, and be levied by distress. *Stat. 26 Geo. 2. c. 28.*

Ways how
broad to be.

A surveyor is to make every cartway leading to a market town eight feet broad at least, and as near as may be level; and caufways for horses must be three feet broad.

Enlarging
highways.

Justices of peace in their quarter-sessions, or five of them, have power to enlarge or widen any highways in their respective counties, ridings, divisions, &c. so that the ground to be taken into the said highways do not exceed eight yards in breadth; and no house be pulled down or ground of any garden, orchard, court or yard be taken away; and making such satisfaction for damages, not exceeding 25 years purchase, as a jury impanelled by the said justices shall assess. *Stat. 8 & 9 W. 3. c. 15.*

The justices may order the money to be raised by a rate or assessment not above 6 d. in the pound, as monies are levied for repair of the highways.

Things laid
in the high-
way.

Persons laying any thing in a highway, not being 20 feet broad, forfeit 5 s. and if timber, hay, straw, stubble, or other matter for making dung, &c. shall be laid in any highway, those who possess lands adjoining, may remove and dispose thereof to their own use. *Stat. 3 & 4 W. & M.*

Trees,
shrubs, &c.

Loggs of timber are not to be laid in any highway, tho' there be sufficient room for travellers left. And no trees, shrubs or bushes, shall grow or stand in, or bough or branch overhang a highway, under the penalty of 5 s. They are to be cut down by the owners of the soil within 10 days after

after notice given by the surveyors, under the like penalty, to be levied by distress; one moiety to go to the informer, the other towards the repairing of the ways. 3 & 4 W. & M. c. 12.

All injuries whatsoever to any highway, as by Annoyances digging a ditch, or making a hedge overthwart it, in general, or laying logs of timber in it, or by doing any other act, which will render it less commodious to the king's people, are publick nuisances at common law. 1 Harw. 212.

And it seemeth that an heir may be indicted for continuing an incroachment or other nuisance to a highway begun by his ancestor; because such a continuance thereof amounts in the judgment of law to a new nuisance. 1 Harw. 214.

And by the statute of 3 W. c. 12. s. 8. If such annoyances shall not be removed and amended within 30 days after notice given in the church immediately after sermon by the surveyor, he shall within 30 days remove and amend the same, and dispose thereof for the repair of the highways. And he shall be reimbursed what charges he shall be at in so doing by the parties who should have done the same; and if they shall upon demand refuse or neglect to pay the same, the surveyor shall apply to a justice of the division, and in default thereof to a neighbouring justice of the county; and upon his making oath before such justice of the notice to the defaulter in manner aforesaid, he shall be repaid all such his charges as shall be allowed to be reasonable by the said justice, to be levied by distress.

And by the 1 G. s. 2. c. 52. If they shall not be removed in 30 days after due notice thereof given by the surveyor, the offender shall forfeit any sum not exceeding 5 l. nor under 20 s. to be levied by warrant of the justices at the special sessions by distress. s. 8.

The

Hedges and
ditches by
whom re-
paired and
scoured.

The soil of highways belongs to him whose land it is on each side; and in whosesoever's ground or side a hedge shall be, to the owner of that land belongs the keeping of the same hedge, and the ditch adjoining and belonging to it on the other side, in repair and scoured. 2 Leon. 148.

Ditches,
trunks or
bridges.

Those who have lands adjoining to the highway, by the stat. 5 Eliz. must scour their ditches as often as there is occasion, and lay trunks or bridges over them, where there are cartways in a ground, that the water may have free passage, under the penalty of 1 s. per rod.

Not doing
it, penalty.

By the stat. 3 & 4 W. & M. if they neglect to do it in 10 days after notice, the forfeiture is 5 s. and by the stat. 1 G. 1. c. 52. Persons who delay to scour and keep open ditches near the highways, 30 days after notice given by the surveyors to do it, on oath thereof made before the justices at their special sessions, forfeit 2 s. 6 d. for every eight days of ditching not scoured, &c. to be levied by distress and sale, &c.

Laying soil
in highways
on scouring
ditches.

If in scouring ditches any person shall lay the soil in the highway, and not carry it away within eight days after notice, he forfeits not exceeding 5 l. nor under 20 s. by 1 G. 1. c. 52. Stat. 3 & 4 W. & M.

When
hedges, &c.
to be made
new and cut
lower.

When highways are deep and foundrous, and the hedges adjoining so high as to prevent their drying, surveyors shall present them at the next sessions, and the justices of peace may order such hedges to be new made or cut lower by the owner in a proper season.

And on the owner's default and neglect 30 days after notice, the surveyors of the highways shall cause the same to be done; and owners are to repay the charge, or the money expended shall be levied on them, by distress, &c. by virtue of the justices warrant. Stat. 7 G. 2. c. 9.

But

But this shall not extend to timber-trees growing in hedges adjoining to highways.

Those who pull up, cut or remove any post, block or stone, or other security set up for securing foot caufways, &c. from waggons and carts, shall forfeit 20 s. for every offence. *Stat. 7 & 8 W. 3. c. 29.*

Surveyors of the highways neglecting to erect or fix a stone or post, where two or more cross highways meet, with an inscription thereon in large characters, as a direction for travellers, containing the name of the next market town to which each of the adjoining highways leads, according to a precept from justices of peace at their sessions, shall forfeit 10 s. *Stat. 8 & 9 W. 3. c. 16.*

The trustees appointed by any act of parliament for repairing any highways may erect engines for weighing carts, waggons, &c. and take besides the toll granted 20 s. for every hundred weight which such cart, &c. shall weigh above the weight of sixty hundred.

But not to extend to carts, waggons or other carriages employed about husbandry, or carrying only of cheese, butter, hay, straw, corn unthrashed, or chalk, or any one stone, block of marble, or piece of timber, nor to caravans, or the covered carriages of noblemen and gentlemen for their private use, or to such timber, ammunition or artillery, as shall be for his majesty's use. *Stat. 14 Geo. 2. c. 42.*

No travelling waggon wherein any burdens shall be carried (except of manure for lands and husbandry, hay, straw, corn unthrashed, coal, timber and materials for building, stone, artillery, &c.) shall be drawn in highways, with more than six horses, oxen or beasts, under the penalty of 5 l. one moiety to the prosecutor, the other for repairs of the ways.

Penalties.

The penalty is to be levied by distress of the horses or oxen of the owner of the waggon in three days by virtue of a justice's warrant: And any person may distrain or seize horses, &c. and deliver them to the surveyor, or other parish officer. *Stat. 9 Ann. c. 18.*

Horses to be seized.

The person seizing, &c. neglecting to bring the cattle to the surveyor, forfeits 20*l.* and the surveyor neglecting to deliver the sum by him received to the justice is liable to the same penalty, to be levied by distress.

Carriers servants.

Persons employed by carriers or others, and driving or assisting in the driving any travelling waggon with more than six horses, &c. shall be liable to the penalty of five pounds, as above: But where six horses, &c. are not sufficient to draw up hill, or in foul way, any person may, by the consent of the owner or driver, &c. add more horses from any other cart or waggon on the road in the same highway.

Horses added going up hills.

Five horses. Statute 1 Geo. 1.

By the statute 1 *Geo. 1. c. 10.* The drawing of waggons and carts was to be with five horses, &c. in length, and no more, under the penalties in the act 6 *Ann.* and this act is according to the first statute made on this head, in the 22d and 23d years of king *Charles* the second.

Act 5 Geo. 1.

But by 5 *Geo. 1. c. 12.* Travelling waggons are to be drawn with six horses, and carts with three. Travelling with more, the extraordinary horses shall be forfeited to the seizer: And travelling waggons must have their wheels bound with iron two inches and a half broad, or be liable to forfeit all the horses above three in number: And hindering the seizure incurs a forfeiture of 10*l.*

Fellies of the wheels of waggons, &c. to be nine inches broad.

After 29 September 1754: No wheel carriage (except chaise marine, coaches, landaus, berlins, chaises and calashes, waggons drawn by less than five horses, two wheel carriages drawn by less than

than four horses, and other carriages drawn by oxen or neat cattle only) shall be drawn upon any turnpike road, unless the fellies of the wheels be of the breadth or gage of nine inches from side to side at the least, under the penalty of 5 l. or one of the horses or beasts of draught drawing such wheel carriage, not being the shaft or thill horse, together with its accoutrements, to the use of the person who shall seize or distrain the same. *Stat. 26 Geo. 2. c. 30.*

And with fellies of that thickness, waggons and other four wheel carriages may be drawn with any number of horses or beasts of draught not exceeding eight, and two wheel carriages with any number of horses or beasts of draught, not exceeding five, without being subject to any penalties. *Same statute.*

With what number of horses to be drawn.

Surveyors of the highways of the several parishes, townships and places, wherein any highway or road intervening between and communicating with two different turnpike roads, doth respectively lie, shall cause all ruts and wheel tracks in such intervening roads respectively, to be beat down, thrown in, and levelled, on or before 29 September 1754, and in case any person liable to the repairing the highways within any of the said parishes, &c. shall neglect to perform his statute-work in the same, or to pay his proportion of the expence of the same; such proportion may be levied by warrant from two justices. *Same statute.*

Surveyors to level all ruts, &c.

The sole or bottom of such fellies shall be of the breadth of nine inches from side to side, at the least; and the sole or bottom of all such fellies shall be flat and even from side to side, or as near as may be. *Stat. 28 Geo. 2. c. 17.*

All waggons, having the fellies of the wheels thereof of the breadth of six inches may pass through all turnpikes with six horses; and all carts

Surveyors, &c.

and other carriages having the fellies of the same breadth, with four horses. *Stat. 28 Geo. 2. c. 17.*

All waggons, wains, or other four wheel'd carriages, not being common stage waggons or carriages, (though the fellies of the wheels are not of the breadth of nine or six inches) may be drawn upon any turnpike road with any number of horses not exceeding five; if drawn with more, the owner shall forfeit 5 *l.* to be levied by distress, or by action. And the driver may be committed to the house of correction for one month. *Stat. 28 G. 2. c. 17.*

Surveyors to
account.

The surveyor, before he shall be discharged from his office, shall at some special sessions give an account upon oath of all money that has come to his hands, which ought to be employed in amending of the highways, and how he hath disposed thereof, and if any shall remain in his hands, he shall deliver the same to his successor, and in case of failure, he shall forfeit double value of what shall be adjudged to be in his hands by the said justices, to be levied by distress, by warrant of two justices of the division; and in default thereof, of any neighbouring justices. 3 *W. c. 12. f. 9.*

For which account or oath no fee shall be taken.

1 *G. ft. 2. c. 52. f. 11.*

Riding on
carriages,
&c.

By the 1 *G. ft. 2. c. 57.* If any person driving any cart, dray or waggon, in the streets of London, shall ride upon the same, not having some other person on foot to guide the same, he shall, on conviction before the alderman of the ward, or justice of the peace, on oath of one witness, forfeit 10 *s.* by distress and sale, half to the informer, and half to the poor; and in default of payment, to be sent to the house of correction for three days. *f. 8.*

Drivers mis-
behaving.

And by the 27 *Geo. 2. c. 16.* If the driver of any cart, car, dray or waggon, shall ride upon any

any such carriage, not having some other person on foot or on horseback to guide the same (such carts as are respectively drawn by one horse only, or by two horses abreast, and are conducted by some person holding the reins of such horse or horses, excepted;) or if the driver of any carriage whatsoever, on any part of any street or highway, shall by negligence or wilful misbehaviour cause any hurt or damage to any person passing or being thereon; every such driver offending in any of the cases aforesaid, and being convicted thereof by confession, or oath of one witness, before one justice, shall forfeit any sum not exceeding 10*s.* or shall be committed to the house of correction for any time not exceeding one month, at the discretion of such justice. And every such driver offending in either of the said cases, may by authority of this act, and without any other warrant, be apprehended by any person who shall see the offence committed, and shall be immediately conveyed or delivered to a constable, or other peace officer, in order to be conveyed before a justice, to be dealt with according to law. *f. 7.*

Mr. *Burn* remarks, " that it is not said who shall have this penalty, so that it seemeth the justice shall estreat the same into the exchequer: And here is no power given to levy the same by distress; but if the party shall not pay upon conviction, the justice (by the act) may commit him to the house of correction."

No person keeping a victualling house, ale-house, or other house of publick entertainment, shall be capable of any place of trust or profit under turnpike trustees, or of farming the tolls. 26 *Geo. 2. c. 30. f. 20.*

If the trustees shall erect or continue any turnpike gate, where they have no power so to do; the justices in sessions, on complaint thereof, may

Pulling
down turn-
pike gates,
&c.

finally determine the same in a summary way, and order the sheriff to remove it. 5 G. 2. c. 33. f. 4. 8 G. 2. c. 20. f. 17.

By the 8 G. 2. c. 20. If any person shall either by day or night, wilfully or maliciously pull down, cut down, pluck up, throw down, level, or otherwise destroy any turnpike gate, post, rail, wall, chain, bar, or other fence belonging to any turnpike gate, or any other chain, bar, or fence set up to prevent passengers from passing by without paying toll; or any house erected for the use of any turnpike gate, or forcibly rescue any person in custody for the said offences, he shall be guilty of felony without benefit of clergy. f. 1.

And the said offences may be tried in any adjacent county. *Same* f. 3.

And by the 5 Geo. 2. c. 33. which made the like offences felony and transportation, the charges of prosecution shall be paid out of the tolls.

But the attainder shall not work corruption of blood, nor forfeiture of lands or goods. 8 Geo. 2. c. 20. f. 4.

And if any person guilty of any the said offences, and being out of prison, shall discover and cause to be apprehended one or more persons who shall have committed any of the said felonies, so as he shall be convicted, he shall have a pardon. 8 Geo. 2. c. 20.

And the hundred shall answer damages not exceeding 20*l.* as in cases of robbery; to be sued for in the name of the clerk of the peace without naming him; the said damages to be applied as the tolls are. 8 G. 2. c. 20. f. 6, 8.

But if an offender is convicted in 12 months, the hundred shall not be liable; but if they have paid such damages, the same shall be repaid to them out of the tolls. 8 G. 2. c. 20. f. 7.

Also no action for such damages shall be brought, unless information on oath be made thereof with-

in

in six days before a justice in or near the hundred.

8 G. 2. c. 20. f. 9.

Nor unless the suit be commenced in six months.

f. 10.

If any person shall assault or threaten the collector of the toll, or forcibly pass thro' without paying toll, or shall forcibly carry away or detain him, so as he shall not be able to return to his duty for three days; he shall on conviction (after summons) by oath of one witness, before two justices near the division, forfeit 5 *l.* by warrant of the said justices by distress; for want of distress to be committed to gaol for six months, unless he shall be sooner discharged by the quarter-sessions; and for the second or third offence he shall forfeit 10 *l.* in like manner; and for want of distress shall be imprisoned for a year, and before he is discharged shall give security at the general quarter-sessions for his behaviour for seven years. 8 G. 2. c. 20. f. 11.

Misusing
the collector
of the tolls

And the collector of the toll may seize and detain any person guilty of the offences before mentioned, and carry him before a justice, without a warrant; who shall bind him over to appear at the next petty sessions for the division, or commit him 'till he finds security to appear. 8 G. 2. c. 20. f. 12.

But persons aggrieved by any order of two justices as aforesaid, may appeal to the next general quarter-sessions; and if the court shall think that reasonable time of notice was not given, they may adjourn the appeal to the next quarter-sessions; and may award costs to either party. *Same f. 15.*

And no *certiorari* shall be granted to remove any thing on this act, out of the county into any other court. *Same f. 16.*

And if an action is brought against any on this act, it shall be laid in the proper county; and

the defendant if he recovers, shall have treble costs. *Same* *f.* 18.

Weighing
engines with
the addition-
al toll for
ever-
weight.

The turnpike trustees, or any five of them, may cause to be erected on any part of the turnpike road, 21 *G. 2. c. 28. f. 1.* a crane, machine or engine for the weighing of carts, waggons, or other carriages, for the conveying of goods; and by writing signed by them, may order such carriages which pass thro' such gate to be weighed with their loading; and empower any person to take, over and above the other toll, 20*s.* for every hundred weight above 60; to be levied as the other tolls. 14 *G. 2. c. 42. f. 1, 3.*

And if it is within 30 miles of *London*, and the tolls amount to 150*l.* a year, they shall in some convenient place cause such crane or engine to be erected. 24 *Geo. 2. c. 43. f. 6, 7.*

And if any person shall hinder, or attempt to hinder, the weighing or seizing any distress for such additional toll, or shall rescue the same, or use any violence to any person concerned in such weighing or seizure; he shall on oath of one witness, before one justice where the offence shall be committed, or the offender shall dwell, be committed to gaol for three months, and forfeit 10*l.* by distress; and if not paid in three days, to be sold. 14 *G. 2. c. 42. f. 4.*

And if any person shall unload, or cause to be unladen, any goods out of any such carriage before the same shall come to the weighing engine, in order to avoid paying the 20*s.* or shall after it has pass'd the engine, load thereon any goods taken from any horse or other carriage belonging to such waggoner, he shall forfeit 20*l.* in like manner. 21 *G. 2. c. 28. f. 2.*

But this shall not extend to carts, waggons or other carriages employed only about husbandry, or carrying of only cheese, butter, hay, straw, corn unthatched, or chalk, &c. or the covered
carriages

carriages of noblemen and gentlemen. 14 G. 2. c. 42. s. 5.

If any one having paid toll gives his ticket to another, to avoid paying, both, the person giving and receiving it forfeit 10 s. on conviction before the commissioners, or a justice. 13 Geo. 2. c. 25.

At a special sessions held for the highways on, &c. at the house, &c.

We whose names are hereunto subscribed, being Justices of the peace in the county of, &c. *do hereby* Appoint-
ment of a
surveyor by
justices of
the peace.
appoint A. B. of, &c. (one of the persons mentioned
in a list this day returned to us by C. D. constable
of, &c.) surveyor of the highways in the parish of,
&c. aforesaid, for and during the space of one whole
year next ensuing the date hereof, according to the
form of the statute in that case made and provided.
Given under our hands and seals, &c.

F. D.

J. S.

Warrant to levy the forfeiture for refusing to serve as surveyor.

Middlesex, ss. **W**HEREAS A. B. of, &c.

was at a special sessions held on, &c. lawfully appointed to serve the office of surveyor of the highways in and for the parish, &c. aforesaid for the year ensuing; and it having been duly proved before us, that the said A. B. had notice thereof within six days after the same, and that he hath refused to take upon him the said office, whereby he hath forfeited the sum of 5 l. one moiety to be paid to, &c. who hath informed us of the said offence, and the other moiety to be applied towards repairing the highways: These are therefore to command you to levy the said forfeiture of 5 l. on the

Surveyors, &c.

goods and chattles of the said A. B. by distress and sale, to be paid and employed as aforesaid; and that you do forthwith return to us, or some other justices, &c. the names of other persons within your parish fit to serve the said office of surveyor, that the business of the highways may not be neglected. Given, &c.

A warrant against a surveyor refusing to account.

WHEREAS it hath been duly proved before us T. D. and J. S. esquires, two of his majesty's justices of peace for the county aforesaid, that A. B. of, &c. surveyor of the highways in and for the said parish, hath neglected to give an account upon oath, at any special sessions, of the money which hath come to his hands, and which ought to be employed in amending the highways, and how he hath disposed thereof, so that for such his neglect he hath forfeited the sum of 40s. These are therefore to command you to levy the said forfeiture, &c.

Indictment for not repairing a common highway.

THE jurors for our lord the king upon their oath present, that from the time whereof the memory of man is not to the contrary, there was and yet is a common and ancient king's highway leading from the town of ——— in the county of ——— towards and unto the market town of ——— in the county of ——— used for all the liege subjects of our said lord the king, and of his predecessors, with their horses, coaches, carts and carriages, to go, return, pass, ride and labour at their will and pleasure; and that a certain part of the same king's common highway called ——— situate lying and being

being in the parish of ——— in the county of ———
aforesaid, containing in length ——— feet and in
breadth ——— feet, on the ——— day of ———
in the ——— year of the reign of ——— and con-
tinually afterwards until the day of the taking of
this inquisition, was and yet is in great decay, for
the want of due reparation and amendment of the
same, so that the subjects of our said lord the king
passing and travelling thro' the same with their
horses, coaches, carts and carriages, could not du-
ring the time aforesaid, nor yet can go, return, pass,
ride and labour, without great danger; to the great
damage and common nuisance of all the liege subjects
of our said lord the king passing thro' that way, and
against the peace of our said lord the king, his crown
and dignity: And that A. O. of ——— aforesaid,
gentleman, ought by reason of the tenure of his lands
and tenements situate, lying and being at ———
aforesaid, in the county aforesaid, to repair and
amend the said highway, when and so often as it
shall be necessary.

Or, that the inhabitants of the said parish of
——— in the said county of ——— the common
highway aforesaid (so as aforesaid being in decay)
ought to repair and amend, when and so often as it
shall be necessary.

The statutes concerning scavengers are the 2 W. Of scaven-
8 & M. 8 & 9 W. 3. and 1 Geo. 1. but the first gers; who
is the most particular. chosen, and
manner of
election.

By this statute two tradesmen are to be chosen
scavengers yearly in every parish within the week-
ly bills of mortality, by the constables, church-
wardens, &c. and other inhabitants; who must
take upon them the office in seven days after elec-
tion and notice, under the penalty of ten pounds,
to be levied by distress, by virtue of a warrant
from one justice; and for want of a distress the
offender is to be committed: The penalty is to be
employed

Surveyors, &c.

employed in repairing the highways and streets in the same parish. 2 *W. & M. sess.* 2. c. 8.

To send
their carts,
&c.

Scavengers every day, except sundays or holy-days, are to bring their carts into the streets, and give notice by a bell, or otherwise, of carrying away dirt, and to stay a convenient time, or shall forfeit 2 *l.*

Peop'e to
sweep their
doors.

The inhabitants in *London, Westminster, Kensington, Southwark*, and within the bills of mortality, are to sweep their streets every wednesday and saturday, or they forfeit for every neglect 3 *s.* 4 *d.* this is increased to 10 *s.* by *Stat.* 8 & 9 *W.* 3. c. 37.

Laying dirt,
&c. in the
streets.
Penalty.

Persons laying dirt, &c. in the streets before their houses are liable to 5 *s.* penalty; and laying ashes, dirt, &c. before the houses and walls of others, or before church walls, or throwing any noisome things in the common sewer, highway, or private vault, forfeit 1 *l.*

Working,
&c.

And hooping or cleansing vessels in streets, lanes, &c. mending coaches, or sawing timber or stones, throwing out dung, soil, &c. likewise incur a forfeiture of 1 *l.*

Scavengers
where to
lodge their
dirt.

But justices in their petit sessions may give scavengers liberty to lodge their dirt in vacant places near the streets, satisfying the owners for the damage; and if the demands of the owners are unreasonable, the justices have a power to moderate the price.

Paving of
streets, &c.

Inhabitants of houses are to keep the streets, lanes and alleys before their doors paved to the middle of the highway, or shall forfeit for every perch or rod 1 *l.* and if not amended 20 *s.* a week 'till done, owners of houses unoccupied are liable to like penalties.

New ways.

One justice may certify to the sessions, what new ways are fit to be paved; and owners and inhabitants of houses new built, not paving or amending the ground before their houses, forfeit

2*l.* for every perch or rod, and the like *per* week for delaying. But when paved, they are only subject to the same penalty as others. Justices of *Middlesex* may at their quarter-sessions make rates for paving *Kensington*, &c.

The justices in sessions may order an assessment to be made not exceeding 4*d.* *per* pound for land, and 8*d.* for every 20*l.* personal estate, every year; and constables, churchwardens, &c. may make a tax, being allowed by two justices, to be collected quarterly, and be levied by distress and sale, &c. if not paid within 14 days. Scavengers rates.

By the statute 1 *Geo.* 1. c. 52. for repairing of highways, the justices of peace at the quarter-sessions may appoint scavengers, and order the repairing and cleansing the streets in any city or market town; and appoint persons to make assessments on all owners and occupiers of lands and houses equally, not exceeding 6*d.* *per* pound *per annum*, to defray the charge of such scavengers, which may be collected by such as the justices think fit, and levied in eight days by distress, &c. Power of quarter-sessions by 1 *Geo.* 1.

The assessments for scavengers in the parish of *St. Ann* and *St. James* within the city of *Westminster*, shall be rated according to the custom of the said city, where it is not otherwise provided. Parishes in Westminster.

Ancient streets of *London* are to be maintained according to custom; and cleansing of streets, &c. must be managed according to the ancient usage of the city of *London*. The lord mayor, or any alderman, may present upon view an offence within the city and liberties thereof; and assess fines not exceeding twenty shillings for every offence, to be paid to the chamberlain for the use of the city. *Stat.* 2 *W. & M.* Cleansing of streets in the city.

Scavengers, when new ones are chosen, must account in 28 days before two justices of peace for the monies assessed and collected, and what remains in their hands must be paid to the new officers; Scavengers accounts.

officers; refusing to account, they shall be committed 'till they do, and 'till payment is made.

Penalties
how reco-
verable and
applied.

The penalties above are recoverable by distress by warrant from a justice, &c. to the constable; and if the offender is convicted by view of the justice, one half of them goes to the poor, and the other to the repair of the ways; but if by evidence, the penalties are distributed between the poor and the prosecutor.

Lights to be
hung out in
the streets.

The householders within the weekly bills of mortality, whose houses adjoin to streets, shall hang out lights from the time it grows dark 'till 12 o'clock at night from *Michaelmas* to *Lady-day*, or pay for lamps, under the penalty of two shillings for every default, &c.

Swine not
to be kept
on pave-
ments.

Swine may not be kept in houses, or back-sides of the paved streets, on pain of forfeiting them; and officers may by warrant from the lord mayor, or one justice, &c. search for swine, and drive away and sell them, and deliver the money to the churchwardens, &c. for the use of the poor.

Cafe about
scavengers
rates in pa-
rishes.

In the case of the parish of *Newington*, on the *Stat. 2 W. & M.* for paving and cleansing the streets; the question was, if persons that lived out of the paving should contribute to the scavengers rates; and the court held the rate which charged all the inhabitants generally, to be good. *Skin. Rep.* 643.

Where per-
sons bound
to repair the
pavement.

Persons who are bound to repair the pavements before their houses at their own costs are also obliged to pay to the scavengers tax; for as to paving before their own doors, they have the principal benefit of it. *5 Mod.* 68. *1 Salk.* 356.

Haymarket,
carts with
hay, straw,
&c.

By the *Stat. 8 & 9 W. 3. c. 17.* Owners of hay brought into the hay-market are to pay three pence per load, and for straw one penny, to such as justices of peace shall appoint, towards mending the street called the hay-market. And no person shall suffer their waggons, carts, &c. to stand

in

in any place within the weekly bills of mortality loaded with hay or straw from *Michaelmas* to *Lady day* after two o'clock in the afternoon; nor from *Lady day* to *Michaelmas* after three o'clock, on pain of 5 s. for each offence.

The wheels of carts (country carts, those used for carrying goods half a mile beyond the paved streets, and of scavengers excepted) are not to be less than six inches in the felly, and to be without iron; and drawn only by two horses after they are up the hills near the water, under the penalty of two pounds for every cart otherwise. 2 W. & M. Cartwheels without iron, &c.

In the statute 2 W. & M. stat. 2. c. 8. s. 19. as far as relates to the drawing any cart, car or dray, with two horses only, hath been found inconvenient; "therefore it is enacted, that any person whatever may make use of any cart, car or dray as aforesaid, drawn by three horses". Stat. 18 Geo. 2. c. 33. s. 2. Carts, &c. may be drawn with three horses.

Any person making use of any such cart, &c. drawn by more than three horses, shall be liable to the penalties by the said act directed to be inflicted on persons using any cart, &c. drawn with more than two horses. Same statute s. 3. And not more.

No person shall drive any cart, car or dray of any kind whatsoever within the cities of *London* and *Westminster*, and the suburbs thereof, the borough of *Southwark*, and other streets within the bills of mortality, unless the master or owner of such cart, &c. shall place upon some conspicuous part of such cart, &c. the name of the owner, and the number of such cart, that he may more easily be convicted of any disorder or misdemeanor. Same stat. s. 4. Carts to be numbered.

The owner of every cart, &c. residing within the limits aforesaid, shall enter his name and place of abode with the commissioners for licensing hackney coaches. Same stat. s. 5. The owners name to be entered.

Any

Penalty.

Any person driving any cart, &c. not marked, numbered and entered as aforesaid, shall forfeit 40*s.* and any person may seize the cart, &c. or any of the horses, and detain them 'till the penalty shall be paid. *Same statute s. 6.*

Surveyors
of streets in
Westminster
by statute.

The statute 2 *Geo. 2. c. 11.* enacts, that on the 26th of *December* in every year the constables, churchwardens and inhabitants of parishes in *Westminster*, &c. shall meet together, and make a list of the names of persons fit to be surveyors of the streets, and return them to the justices at a special sessions held in ten days after; and they are to appoint two or more to the office under their hands and seals.

If the persons appointed refuse to act, they shall forfeit 20*l.* and the justices are to nominate other fit persons to perform the office, on like forfeiture on refusal; and so upon the death of any person, &c. and if the constable, &c. do not return to the justices such lists, they shall forfeit 10*l.*

To view
the streets
every six
weeks.

The surveyors every six weeks, or oftener if necessary, are to take a view of all the streets, lanes and alleys in the places for which they are appointed; and shall make a return, on oath, to the justices at a special sessions to be holden in the week preceding the quarter-sessions, of the names of persons whose pavements are out of repair; and the next justices are to present the same at the quarter-sessions, which is to proceed thereupon.

And cause
defaults to
be repaired,
&c.

Publick notice shall be given in the church, on the next Lord's day, of all defaults, &c. and if they are not amended in twenty days after, the surveyors may cause them to be repaired, and shall be reimbursed by the parties who should have done the same, on oath being made of the charges before a justice, &c.

If

If any paving belonging to an empty house shall be out of repair, the surveyors are to make it good, and may have it new paved, if the justices think fit; and the charges shall be levied on the next tenant by distress: And the new tenant may retain the sum out of his rent.

Empty houses, next tenant to pay for repairs.

And where any dwelling-house, &c. is burnt or pulled down before the sums are paid, the money shall be levied in like manner on any tenant of the new house erected in the place of such building.

So where any house burnt, &c.

Surveyors of the streets neglecting their duty forfeit 40 s. and the justices of peace omitting to do what is required of them are liable to the penalty of 5 l.

Neglects.

By this act the justices may order the amendment of water-pipes and pavements where they are irregular or bad. And the surveyors, or other persons amending them, shall be repaid by the proprietors of such water works.

Water-pipes ordered to be amended.

And justices of peace at any special sessions may give a reward or allowance to the surveyors for their trouble and loss of time, not exceeding 8 l. a year, to be paid out of the scavengers rates.

Allowance to surveyors.

This statute shall not extend to the royal palaces, or to *St. James's Square*. And all laws in force for cleaning the streets, &c. within the bills are to be duly observed and put in execution so far as they are consistent with this act.

Other laws in force.

And scavengers and rakers shall sweep up and lay in heaps all the dirt which they are to carry away, on forfeiture of 40 s. for default.

Scavengers.

The statute of 12 Geo. 1. c. 25. appoints commissioners and trustees to clean and repair *St. James's Square*, and continue the same cleaned; who may employ workmen, labourers and carters, &c. for that purpose.

St. James's Square how repaired.

Rates to be made and assessed on houses at so much per foot in front, not exceeding 10 s. a year, to

Rates made on out-houses, &c.

Collectors,
&c. to be ap-
pointed.

Trustees to
direct di-
stresses, &c.

Annoying
the square,
&c.
Penalty.

The square
a distinct
ward.

Lincoln's
inn fields to
be inclosed
and kept
clean.

And yearly
rates paid
to them.

Annoy-
ances, in-
croachment,

to be levied by distress. The trustees by writing under their hands shall appoint a collector and receiver of the rates, and they are to account upon oath before justices of the peace, &c. and if they refuse to pay the money to such persons as the trustees order, the justices of *Westminster* at a special sessions may commit them to gaol 'till paid.

Three or more of the trustees may direct the collector, with assistance of a constable, to enter houses in the day time, and distrain goods of persons refusing to pay the rates, and sell the distress in five days, if not replevied; or if a distress be not proper, may bring action at law for money payable.

Persons annoying the square with filth, being convicted before one justice of peace, incur 20 s. penalty, to be levied by virtue of the justice's warrant; and making any incroachment on the square shall forfeit 20 l.

The *East*, *West* and *North* parts of this square, &c. shall be a distinct ward, as to scavengers rates only, and be exempted from paying any other rates.

The statute 8 *Geo. 2. c. 26.* enacts, that the proprietors and inhabitants of *Lincoln's Inn Fields* shall chuse among themselves trustees to direct the inclosing of the square; who may employ artificers, &c. for doing thereof, and removing all annoyances, &c.

And yearly rates shall be made on all houses not above 2 s. 6 d. in the pound, payable to the trustees, or whom they shall appoint to receive and collect the same, part by landlords, and part by the tenants, to be levied by distress and sale of goods, &c. and the square called *Lincoln's Inn Fields*, and back streets, are to be a distinct ward as to the scavengers rates and watch.

If any persons annoy the fields with any filth, they shall forfeit 20 s. and be committed 'till removed;

moved; making any incroachment is liable to sports, &c. 50 l. penalty; and persons assembling to use sports, Penalties of. ride horses, or breaking fences, &c. to forfeit 40 s. to be levied by a justice of peace's warrant.

The trustees to raise 6000 l. may grant annuities, or borrow the money at a certain interest, &c. ^{Annuities grantable.}

Vagrants.

Idle and disorderly persons.

BY the 7 J. c. 4. Idle and disorderly persons shall be sent to the house of correction; and by the 17 Geo. 2. c. 5. Idle and disorderly persons are thus described: (1) All persons who threaten to run away, and leave their families to the parish. (2) All persons who shall unlawfully return to the parish or place from whence they have been legally removed by order of two justices, without bringing a certificate from the parish or place whereto they belong. (3) All persons who not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual and common wages given to other labourers in the like work, in the parishes or places where they are. (4) All persons going about from door to door, or placing themselves in streets, highways or passages, to beg, or gather alms, in the parishes or places where they dwell — All these shall be deemed idle and disorderly persons. And it shall be lawful for one justice to commit such offenders (being thereof convicted before him, by his own view, or confession, or oath of one witness) to the house of correction,

to

Vagrants.

to be kept to hard labour not exceeding one month. And any person may apprehend, and carry before a justice any such persons going about from door to door, or placing themselves in streets, highways or passages, to beg alms in the parishes or places where they dwell; and if they shall resist, or escape from the person apprehending them, they shall be punished as rogues and vagabonds. And the said justice, by warrant under his hand and seal, may order any overseer where such offender shall be apprehended, to pay 5 s. to any person in such parish or place so apprehending them, for every offender so apprehended; to be allowed in his accounts, on producing the justice's order, and the person's receipt to whom it was paid: And if the overseer shall neglect or refuse to pay the same, the said justice, on oath thereof, may by his warrant order the same to be levied by distress and sale of his goods; and in such case he shall not be allowed the same in his accounts. *§ 1.*

Rogues and Vagabonds.

An infant under the age of seven years shall not be said to be a rogue and vagabond; but shall be removed to its place of settlement, as other poor persons not vagrants. *Black. 276.*

But persons who shall be deemed rogues and vagabonds, are by the 17 G. 2. c. 5. these that follow:

- (1) All persons going about as patent gatherers, or gatherers of alms, under pretences of loss by fire, or other casualty.
- (2) Persons going about as collectors for prisons, gaols, or hospitals.
- (3) Fencers.
- (4) Bearwards.
- (5) Common players of interludes, and all persons who shall for hire, gain or reward, repre-

sent

sent or perform, or cause to be acted, represented or performed, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part therein, not being authorized by law.

(6) Minstrels,

(7) Jugglers.

(8) All persons pretending to be gypsies, or wandering in the habit or form of an *Aegyptian*.

And by the 1 & 2 P. & M. c. 4. If any person shall bring into the realm any persons calling themselves, or commonly called *Aegyptians*, he shall forfeit 40 *l.* half to the king, and half to him that shall sue. And if any of the said persons called *Aegyptians*, so brought into the realm, shall continue within the same for one month, he shall (on conviction in the county where he was apprehended) be adjudged guilty of felony without benefit of clergy, and shall not be tried by a jury *per medietatem linguæ*. But this not to extend to any child not above 13 years of age; nor to charge any person as accessory to the said felony.

And by the 5 *El.* c. 20. Every person (though not brought from beyond sea) who shall be found in any company of vagabonds, commonly called *Aegyptians*, or counterfeiting, transforming or disguising themselves by their apparel, speech or other behaviour like unto them, and shall continue in the same at one time, or at several times, by the space of one month, shall on conviction in the county where he was apprehended, be adjudged guilty of felony without benefit of clergy, and shall not be tried by a jury *per medietatem linguæ*. But this not to extend to any child within 14 years of age.

(9) Or pretending to have skill in physiognomy, palmistry, or like crafty science, or to tell fortunes.

(10) Or using any subtil craft to deceive and impose on any of his majesty's subjects.

Vagrants.

(11) Or playing or betting at any unlawful games or plays.

(12) All persons who run away and leave their wives and children, whereby they become chargeable to any parish or place.

(13) All petty chapmen, and pedlars, wandering abroad, not being duly licensed, or otherwise authorized by law.

(14) All persons wandering abroad, and lodging in alehouses, barns, outhouses, or in the open air, not giving a good account of themselves.

(15) All persons wandering abroad, and begging, pretending to be soldiers, mariners or sea-faring men.

But this not to extend to soldiers wanting subsistence, having lawful certificates from their officers, or the secretary at war; or to mariners or sea-faring men licensed by some testimonial or writing under the hand and seal of some justice of the peace, setting down the time and place of their landing or discharge, and the place to which they are to pass, and the names of the chief towns or places through which they are to pass, and limiting the time of their passage, while they continue in the direct way to the place to which they are to pass, and during the time so limited.

Which exception hath a reference to the statute of the 39 *El. c. 17.* which is as follows: All idle and wandering soldiers or mariners, or idle persons which shall be wandering as soldiers and mariners, shall settle themselves in some service, labour, or other lawful course of life without wandering, or otherwise repair to the places where they were born, or to their dwelling places if they have any, and there remain, betaking themselves to some lawful trade or course of life; on pain to be reputed as felons, and to suffer as in case of felony without benefit of clergy. *s. 2.*

And

And every idle and wandring soldier or mariner which coming from his captain from the seas, or from beyond the seas, shall not have a testimonial under the hand of a justice of the peace, of or near the place where he landed, setting down therein the place and time when and where he landed, and the place of his dwelling or birth unto which he is to pass, and a convenient time therein limited for his passage, or having such testimonial, shall wilfully exceed the time therein limited, above 14 days: And also as well every such idle and wandring soldier, or mariner, as every other idle person wandring as soldier or mariner, which shall forge or counterfeit any such testimonial, or have with him any such testimonial forged or counterfeited, knowing the same to be so; in all these cases, every such act or acts to be felony without benefit of clergy. *f. 3.*

And the justices of assize and justices of the peace in sessions, may hear and determine all such offences, and execute the offenders convicted before them, as is usual in cases of felony; except some honest person valued at the last subsidy to 10*l.* in goods, or 40*s.* in lands, or else some honest freeholder as by the said justices shall be allowed, will be contented before such justices to take such offender into his service for one whole year, and then before the said justices will be bound by recognizance of 10*l.* if he keep not the said person for one whole year, and bring him to the next sessions for the peace and gaol delivery next ensuing after the said year; and if any such person retained, depart within the year without the licence of him that so retained him, he shall be guilty of felony without benefit of clergy. *f. 4.*

But if any such idle and wandring person shall fall sick by the way, so that by reason of his weakness he cannot travel to his journey's end within the time limited in his testimonial, he shall
not

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not be within the danger of this statute, so as he settle himself in some lawful course of life as aforesaid, to repair as aforesaid to the place where he was born, or was last abiding, within convenient time after the recovery of his sickness, and there remain as aforesaid. *f. 5.*

And if any such soldier or mariner coming from the seas, shall not at the time of his landing, or in his travel to the place whereunto he is to repair, going the direct way [have wherewithal to maintain himself in his journey] he may resort to some justice next adjoining to the place of landing or way, and make known unto him his poverty; who upon perfect notice thereof had, may licence him to pass the next and direct way to the place where he is to repair, and to limit him so much time only as shall be necessary for his travel thither; and in such case, pursuing the form of such licence, he may for his necessary relief in his travel ask and take the relief that any person shall willingly give him. *f. 7.*

Note; The above words [*have wherewithal to maintain himself*] are inserted, in order to make up the sense, the statute, as Mr. Burn observes, being evidently imperfect without some such like words; and it is said the parliament roll in this place is in like manner imperfect.

(16) Or pretending to go to work in harvest.

But this shall not extend to any person going abroad to work at any lawful work in the time of harvest, so as he carry with him a certificate signed by the minister and one of the churchwardens or overseers where he shall inhabit, declaring that he hath a dwelling-house or place there.

Which exception hath reference to a clause in the statute of the 13 & 14 C. 2. c. 12. concerning settlements, by which 40 days inhabitancy made a settlement; whereby it is enacted, That it shall be lawful for any person to go into any county,

county, parish or place, to work in time of harvest, or at any time to work at any other work, so that he carry with him a certificate from the minister of the parish and one churchwarden and one overseer, that he hath a dwelling house or place in which he inhabiteth, and hath left wife and children, or some of them there, (or otherwise as the condition of such person requireth) and is declared an inhabitant there; and in such case if he shall not return when his work is finished, or shall fall sick or impotent, it shall not be accounted a settlement.

(17) And all other persons wandering abroad and begging, shall be deemed rogues and vagabonds.

Incorrigible rogues.

By the 17 Geo. 2. c. 5. Incorrigible rogues are thus described:

(1) All end-gatherers offending against the statute of the 13 G. being convicted of such offence.

By which act of the 13 G. c. 23. s. 8. the offence is this, *viz.* The collecting, buying, receiving or carrying any ends of yarn, wests, thrums, short yarn, or other refuse of cloth, druggot or other woollen goods; and the punishment of such persons is, in order to prevent their committing abuses by such practices in the woollen manufacture.

(2) All persons apprehended as rogues and vagabonds, and escaped from the persons apprehending them, or refusing to go before a justice, or to be examined on oath before such justice, or refusing to be conveyed by such pass as is herein after directed, or knowingly giving a false account of themselves on such examination after warning given them of their punishment.

(3) All rogues or vagabonds who shall break or escape out of any house of correction, before the

L
expiration

Vagrants.

expiration of the term for which they were committed, or ordered to be confined by this act.

(4) All persons who after having been punished as rogues and vagabonds, and discharged, shall again commit any of the said offences :—All these shall be deemed incorrigible rogues. *f. 4.*

Apprehending rogues.

If any person shall be found offending against this act, the constable shall apprehend him, and convey, or cause him to be conveyed, to a justice of the peace. 17 G. 2. c. 5. *f. 5.*

And any other person *may* apprehend him, and carry him to the constable or to a justice.

Reward for apprehending.

If any person, not being a constable, shall apprehend any such rogue or vagabond, and shall deliver him to a constable, or convey him to a justice; or if any constable shall so apprehend and convey him, it shall be lawful for such justice to reward him, by making an order under hand and seal upon the high constable to pay 10*s.* to the person so apprehending him, within one week after demand, and producing such order, and on his giving a receipt for the same, which shall be allowed by the treasurer to such high constable on passing his account, and delivering such order and receipt, and also his own receipt for the same, to such treasurer; the treasurer also to be allowed the same in his accounts, on producing the said vouchers: And in towns corporate, and other places where there are no high constables, such petty constables shall pay or retain such reward, and be allowed the same in their accounts, on producing the like vouchers. And if any high constable, or where there is none, such petty constable shall refuse or neglect to pay such reward on demand,

demand, such justice by his warrant may levy the sum of 20 s. by distress and sale of his goods, and thereout allow the said reward and such other recompence for his trouble, loss of time and expences, as the said justice shall think fit; the overplus to be returned on demand. 17 G. 2. c. 5. s. 5.

Penalty for not apprehending.

If the constable shall refuse or neglect to use his best endeavours to apprehend or convey to some justice such offender; or if any other person being charged by any justice so to do, shall refuse or neglect to use his best endeavours to apprehend and deliver to the constable, or to carry such offender before some justice, where no constable can be found; he shall on being convicted thereof, on view, or oath of one witness before one justice, forfeit 10 s. to the poor, by distress and sale, by warrant of such justice, returning the overplus after the charges of such distress satisfied. 17 G. 2. c. 5. s. 5.

Privy search.

The justices or two of them shall four times a year at least, or oftener, (if need be) meet in their respective divisions, and by their warrant command the constables of every hundred, parish, town and hamlet, who shall be assisted with sufficient men to make a general privy search in one night, for the apprehending of rogues and vagabonds: And every justice shall also, on receiving information that rogues and vagabonds are in any place within his jurisdiction, issue his warrant to the constable to search for and apprehend such rogues and vagabonds; and such as they shall find upon such search, they shall cause to be brought before a justice. 17 Geo. 2. c. 5. s. 6.

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And by the 25 G. 2. c. 36. which hath continuance for three years, &c. Two justices, in case any person apprehended upon a general privy search, or by special warrant, shall be charged before them with being a rogue and a vagabond, or an idle and disorderly person, or with suspicion of felony, (altho' no direct proof be then made thereof) may examine such person on oath as to his settlement, and means of livelihood: And the substance of such examination shall be put in writing and signed by such person and by the justices, and be transmitted to the next sessions to be filed; and if such person shall not shew, that he has a lawful way of getting his livelihood, or shall not procure some responsible housekeeper to appear to his character, and to give security (if required) for his future appearance at some other day to be fixed for that purpose, the justices may commit him to some prison or house of correction for any time not exceeding six days; and in the mean time order the overseers of the poor to advertise in some publick paper a description of his person, and any thing that shall be found upon him, or in his custody, and which he shall be suspected not to have come honestly by, and the place of his commitment, and the time and place appointed for his re-examination; and if no accusation shall be then laid against him, he shall be discharged, or otherwise dealt with according to law. *s. 12.*

But by the shortness of the time limited for advertising him, this seems chiefly calculated for the places within the bills of mortality. *Burn.*

Examination.

Where any rogues or vagabonds, apprehended by any constable or such other person as aforesaid, shall be brought before a justice, he shall inform himself, by the examination upon oath of the person

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person apprehended, or of any other person, of the condition and circumstances of the person so apprehended, and of the parish or place where he was last legally settled; the substance of which shall be put into writing, and be signed by the person or persons so examined; and the justice shall likewise sign the same, and transmit it to the next sessions, there to be filed and kept on record. 17 G. 2. c. 5. s. 7.

Whipping or imprisonment.

And such justice shall order such person so apprehended, to be publickly whipt by the constable, petty constable, or some other person, to be appointed by such constable or petty constable of the parish or place where such person was apprehended; or shall order him to be sent to the house of correction till the next sessions, or for any less time as such justice shall think proper. 17 Geo. 2. c. 5. s. 7.

Further punishment.

And where any offender against this act shall be committed to the house of correction till the next sessions, and the justices at such sessions shall, on examination of the circumstances of the case, adjudge such person a rogue or vagabond, or an incorrigible rogue; they may order such rogue or vagabond to be detained in the house of correction to hard labour for any further time not exceeding six months, and such incorrigible rogue for any further time not exceeding two years, nor less than six months; and during his confinement to be whipped in such manner, and at such times and places, as they shall think fit; and such person may, if the sessions think convenient, afterwards be sent away by a pass: And if such person, being

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a male, is above the age of 12 years, the court may, before he is discharged from the house of correction, send him to be employed in his majesty's service by sea or land; and if such incorrigible rogue, so ordered by the sessions to be detained in the house of correction, shall break out, or make his escape, or shall offend again in like manner, he shall be guilty of felony, and be transported for seven years. 17 Geo. 2. c. 5. s. 9.

And by the 13 & 14 C. 2. c. 12. The justices in sessions may transport such rogues, vagabonds, and sturdy beggars, as shall be duly convicted and adjudged to be incorrigible. s. 23.

And by the 17 G. 2. c. 5. If the child of any vagrant, above the age of seven years, shall be committed to the house of correction, the justices in sessions, if they see convenient, at any time before such child be discharged, may order such child to be placed out as a servant or apprentice, to any person who is willing to take such child, till such child shall be of the age of 21 years, or for a less time: And if any offender, who was found wandering with such child, shall be again found with the same child which was so placed out, he shall be deemed an incorrigible rogue. s. 24.

And where any vagrants have been committed to the house of correction till the next sessions, if on examination of such persons no place can be found to which they may be conveyed, the sessions shall order them to be detained, and employed in the house of correction, until they can provide for themselves, or until the justices in sessions can place them in some lawful calling, as servants, apprentices, soldiers, mariners, or otherwise, either within this realm, or in the plantations in *America*. s. 28.

Conveying.

Conveying.

After such whipping or confinement, the justice may, if he thinks convenient, by a pass under hand and seal, cause him to be conveyed to the place of his last legal settlement; but if it cannot be found, then to the place of his birth; or if he be under the age of 14 years, and have any father or mother living, then to the place of the abode of such father or mother, there to be delivered to some churchwarden or overseer. 17 Geo. 2. c. 5.

f. 7.

And the justice shall make a duplicate of the pass and examination, and sign the same; and shall afterwards transmit the duplicate of the pass annexed to the examination to the next sessions, there to be filed and kept on record; and shall annex the duplicate of the examination to the pass, and send it with the same: And the said pass, examination, and duplicate thereof, shall and may be read in any court of record as evidence.

f. 8.

And the justice who shall make the pass shall, with the pass, cause likewise to be delivered to the constable a note or certificate, ascertaining how they are to be conveyed by horse, cart, or on foot, and what allowance such constable is to have for conveying them. f. 10.

And the constable, who shall receive such pass and certificate, shall convey the person according to the direction of the pass the next direct way to the place where he is ordered to be sent, if it be in the same county, riding, division, corporation or franchise: If not, he shall deliver the said person to the constable of the first town, parish or place in the next county, riding, division, corporation or franchise, in the direct way to the place whither he is to be conveyed, together

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with the pass and duplicate of the examination, taking his receipt for the same. And such constable shall without delay apply to some justice in the same county or division, who shall make the like certificate, and deliver it to such constable, who shall with all speed convey such person unto the first parish, town or place, in the next county or division, in the direct way to the place to which he is to be conveyed; and so from one county or division to another, till they come to the place to which such person is sent. And the constable, who shall deliver such person to the churchwarden, or other person ordered to receive him, shall at the same time deliver the said pass with the duplicate of the examination, taking their receipt for the same. *f. 11.*

And any justice before whom a vagrant shall be carried, may order him to be searched, and his bundles to be inspected by the constable or other officer in his presence; and if it shall appear, that such vagrant shall be found to have sufficient to pay his passage, either in the whole or in part, the justice shall order so much of the money to be paid, or other effects found upon such vagrant to be sold, and employed towards the expence of taking up and passing such vagrant, returning the overplus, after deducting the charges of such sale. *f. 12.*

And the justices in sessions shall limit what rates and allowances by the mile, or otherwise, shall be made for conveying or maintaining rogues, vagabonds, or incorrigible rogues; and make such other orders for the more regular proceeding therein, as they shall think proper. *f. 16.*

And if any petty constable shall bring to any high constable such certificate as aforesaid, together with a receipt or note from the constable to whom the person was delivered, the said high constable shall pay the rates ascertained by such certificate, taking

taking the petty constable's receipt; the high constable to be allowed the same by the treasurer on passing his accounts, on his delivering up such certificate and receipt, and giving his own receipt for the same to such treasurer; the same to be allowed the treasurer in his accounts, on his delivering up the vouchers aforesaid. And if the high constable shall refuse or neglect to pay the same on demand, it shall be lawful for one justice by his warrant to levy double the sum by distress and sale, and thereout to allow the petty constable the sum ascertained by the certificate, and such other recompence for his trouble, loss of time and expences, as the justice shall think fit; the overplus to be returned to the high constable on demand. And in cities, towns corporate, and other places where there is no high constable, the petty constable shall be allowed what he shall so pay, pursuant to such certificate in his accounts, on delivering up such vouchers: Or if any master of a house of correction shall deliver such certificate and receipt to the treasurer, the treasurer shall pay the same to him, taking his receipt for the same, and be allowed the same in his accounts, on delivering such vouchers. *f. 17.*

And by the 26 G. 2. c. 34. Where the high constable hath not money in his hands sufficient to answer the said expences, the treasurer shall pay the same to such petty constable, on his producing the certificate, and such other vouchers as aforesaid. *f. 2.*

And if any petty constable, or governor of any house of correction, shall counterfeit any such certificate or receipt, or knowingly permit any alteration to be made therein, he shall forfeit 50*l.* And if he shall not convey, or cause to be conveyed, such vagrants, or not deliver them to the proper person; or if any constable shall refuse to receive any such person, or to give such receipt,

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he shall forfeit 20 *l.* by distress and sale by warrant of the justices in sessions where the offence shall be committed; half to the informer, and half to the treasurer, to be applied by him as part of the publick stock, returning the overplus on demand, charges of distress being first satisfied. 17 G. 2. c. 5. s. 18.

What to be done with at the place to which he is sent.

The parish or place, to which any rogue, vagabond, or incorrigible rogue shall be conveyed, shall employ in work, or place in some workhouse or almshouse, the person so conveyed, until he shall betake himself to some service, or other employment: And if he shall refuse to work, or not betake himself to some service, or other employment, the overseers may cause him to be carried to some justice, to be sent to the house of correction, there to be kept to hard labour. 17 G. 2. c. 5. s. 19.

But if the churchwarden, or other person who shall receive any person so sent, shall think the examination to be false, he may carry the person so sent before a justice, who, if he see cause, may commit such person to the house of correction till the next sessions; and the justices there, if they see cause, may deal with such person as an incorrigible rogue: But the person so sent shall not be removed from the place to which sent, but by order of two justices, in the same manner as other poor persons are removed to the place of their settlement. s. 11.

Scottish vagrants.

The constable of any parish or place within the counties of Cumberland, Northumberland, Durham,
or

or *Town of Berwick*, shall, on any person being so delivered to him by a pass and examination, whose place of legal settlement is in *Scotland*, deliver the examination to the clerk of the peace, to be kept amongst the records; and convey such person with the pass into the next adjoining shire or place in that part of the united-kingdom, and deliver him to some constable or other officer of the next parish, district or place within the said shire or place, taking his receipt for him; and such officer shall receive such person and give such receipt, and dispose of him according to law: And if any such vagrant, after being so conveyed into *Scotland*, shall be found wandering, begging, or misbehaving himself in *England*, he shall be deemed an incorrigible rogue. 17 Geo. 2. c. 5. s. 13.

Irish vagrants.

Every master of a vessel bound for *Ireland*, the *Isles of Man*, *Jersey*, *Guernsey* and *Scilly*, shall, on warrant to him directed under the hand and seal of a justice of the place where such vessel shall lie, take on board such vagrant as shall be expressed in the warrant, and convey him to such place; and for the charges thereof, the constable who serves him with the warrant, shall pay him such rate by the head as the justices in sessions shall appoint; and such master shall on the back of the warrant sign a receipt for the money so paid, and also for the vagrant so delivered; which warrant so indorsed shall be produced to the justice who signed and sealed the same, and upon his allowance thereof under his hand, the money so paid shall be repaid by the county, as other money for conveying vagrants. And such master neglecting or refusing to transport such vagrants, or to indorse such receipt, shall forfeit 5 *l.* to the poor of the parish or place where the offence shall be committed,

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mitted, to be levied by distress and sale of the ship, or any goods within the same, by warrant of one justice, returning the overplus on demand, after the penalty and charges of the same are satisfied. 17 Geo. 2. c. 5. s. 14.

Lunatick vagrants.

Whereas there are sometimes persons, who by lunacy or otherwise, are so far disordered in their senses, that it may be dangerous to permit them to go abroad; it shall be lawful for two justices where such persons shall be found, by their warrant, to cause them to be apprehended and locked up in some secure place within the county or precinct, as such justices shall appoint; and if such justices find it necessary, to be there chained, if the settlement of such person be within such county or precinct; and if not, then to be sent to the place of his last legal settlement by a pass, *mutatis mutandis*, and shall be locked up or chained by warrant of two justices of the place to which he is sent: And the reasonable charges of removing, and of keeping, maintaining and curing such person, during such restraint, (which shall be during such time only as such lunacy or madness shall continue) shall be paid, such charges being first proved upon oath, by order of two justices, directing the churchwardens or overseers where any goods, chattles, lands or tenements of such person, shall be, to seize and sell so much of the goods and chattles, or receive so much of the annual rents of the lands and tenements, as is necessary to pay the same, and to account for what is so seized, sold, or received, to the next sessions: But if such person hath not an estate to pay the same over and above what shall be sufficient to maintain his family, then such charges shall be paid by the parish, town or place, to which such person belongs, by

by order of two justices, directed to the church-wardens and overseers for that purpose. 17 G. 2. c. 5. s. 20.

But this shall not extend to restrain the king's prerogative, or power of the lord chancellor, or the chancellor of the county palatine of *Lancaster*, or the chamberlain of the county palatine of *Chester*, concerning such lunatics, or to restrain or prevent any friend or relation of such lunatics from taking them under their own care and protection. s. 21.

Penalty of lodging vagrants.

If any person shall knowingly permit any rogue, vagabond or incorrigible rogue, to lodge or take shelter in his house, barn, or other outhouse or building, and shall not apprehend and carry him before a justice, or give notice to the constable so to do, and shall be convicted thereof by confession, or oath of one witness before one justice, he shall forfeit not exceeding 40 s. nor less than 10 s. half to the informer, and half to the poor, by distress and sale. And if any charge shall be brought on any parish or place by means of such offence, the same shall be answered to the said parish or place by such offender, and be levied by distress and sale of his goods as aforesaid; and if sufficient distress cannot be found, such offender shall be committed to the house of correction by the justice, for any time not exceeding one month. 17 G. 2. c. 5.

Children born in vagrancy.

Whereas women wandering and begging are often delivered of children in parishes and places to which they do not belong, whereby they become chargeable to the same, it is enacted, That where any such woman shall be so delivered, and
become

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become chargeable, the churchwardens or overseers may detain such woman in their custody until they can safely convey her to a justice, who shall examine her, and commit her to the house of correction until the next sessions, who may, if they see convenient, order her to be publickly whipped and detained in the house of correction, for any further time not exceeding six months: And upon application by the churchwardens and overseers of the place where she was so delivered, the justices at such sessions shall order the treasurer to pay them such a sum, as shall be adjudged a reasonable satisfaction for the charges such place has been put to on such woman's account. And if such woman shall be detained and conveyed to a justice as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be sent thither for want of other settlement by a pass by virtue of this act; but the settlement of such woman shall be deemed the settlement of such child. 17 Geo. 2. c. 5. s. 25.

General penalty for hindring the execution of the vagrant act.

If any constable, or other officer, or governor of any house of correction, shall be defective in his duty, in any case for which no punishment is herein before particularly provided; or if any person shall hinder the execution of this act, or shall rescue any person apprehended or passing from place to place by virtue thereof; or shall be advising, aiding or assisting to his escape, and shall be thereof convicted on oath of one witness before one justice, he shall forfeit not exceeding 5 l. nor under 10 s. to the poor, by distress and sale: And if sufficient distress cannot be found, to be committed to the house of correction, to be kept to hard labour not exceeding two months. 17 Geo. 2. c. 5. s. 22.

Charges

Charges of maintaining and conveying vagrants.

To defray the expences of apprehending, conveying and maintaining rogues, vagabonds, and incorrigible rogues, and defraying all other expences necessary for the execution of this act, not herein before provided for, the justices in sessions may cause such sums, as shall be necessary, to be raised in the same manner as the general county rate. 17 G. 2. c. 5. s. 33.

Appeal.

Any person aggrieved by any act of any justice out of sessions, in or concerning the execution of this act, may appeal to the next general or quarter sessions of the county, riding, liberty or division, giving reasonable notice thereof, whose order thereupon shall be final. 17 G. 2. c. 5. s. 26.

Treble costs.

Persons sued for any thing done in the execution of this act, may plead the general issue; and if they recover, shall have treble costs. 17 G. 2. c. 5. s. 34.

Exception of special franchises.

In all cities and towns, where by virtue of special acts of parliament the charge of passing vagrants is to be defrayed in other manner than is by this act directed; or where such vagrants, by virtue of special statutes, are to be apprehended and conveyed by any person or officer, other than those named in this act, the same shall not be altered hereby: And persons conveyed in London shall not be delivered in any other precinct within the

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the city, but in the next county. 17 G. 2. c. 5.
s. 27.

Order upon the overseer to pay 5 s. for
apprehending a person begging in
his own parish.

Berks. { To the overseers of the poor of the
parish of _____ in the said county.

WHEREAS it duly appears unto me _____,
esquire, one of his majesty's justices of the
peace in and for the said county, that A. O. of
_____ in the parish of _____ in the said county,
an idle and disorderly person, did on the _____ day
of _____ go about from door to door [or place himself
in the streets, highways and passages] in the said
parish, to beg and gather alms there; and was then
and there apprehended in the said parish of _____
by A. A. an inhabitant of the said parish, and was
by him brought before me in order to be dealt with
according to law: I do hereby order you or some or
one of you to pay unto the said A. A. the sum of
five shillings on demand, as a reward for apprehend-
ing the said A. O. he producing and delivering to
you this order, and giving to you a receipt for the
said sum. Given under my hand and seal at _____
in the said county the _____ day of _____ in the
_____ year of the reign _____.

Order for payment of 10 s. for appre-
hending a vagrant.

Berks. { To the high constable of _____.

WHEREAS it duly appeareth unto me _____
esquire, one of his majesty's justices of the
peace

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peace for the said county, that A. R. a rogue and vagabond, was found wandring and begging [or as the case shall be] in the parish of _____ in the said county; which said A. R. was this day brought before me by A. J. of _____, yeoman, in order to be dealt with according to law: I do hereby order you to pay unto the said A. J. as a reward for apprehending and bringing before me the said rogue and vagabond, the sum of 10s. within one week after demand thereof made, upon his producing and delivering to you this order, and giving unto you his receipt for the said sum. Given under my hand and seal at _____ in the said county the _____ day of _____.

Warrant for priyv search.

Berks. { To the high constable of _____.

AT a meeting of the justices of our lord the king assigned to keep the peace within the said county, held at _____ for the division of _____ this _____ day of _____ in the _____ year of the reign of _____ by us _____ and _____, esquires, two of the said justices assembled at the said meeting, being resident, living and dwelling within the said division: We do hereby command you and every of you respectively in your several divisions, parishes, towns and hamlets commanding, taking to your assistance sufficient men of the places respectively (who are hereby required to assist you accordingly) to make a general priyv search in one night, to wit, in the night of the tenth day of this present month of _____, being Monday night next ensuing the date hereof, throughout your several and respective limits, for the finding and apprehending of rogues and vagabonds: And such as
you

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you shall so find and apprehend upon such search, you are respectively to cause to be brought before us, or either of us, or any other justice or justices of our said lord the king assigned to keep the peace within the said county, to be dealt with according to law. Given under our bands and seals at — aforesaid in the county aforesaid, the day and year first above written.

Examination of a vagrant.

Berks. **T**HE examination of A. O. a rogue and vagabond, taken on oath before me — one of his majesty's justices of the peace in and for the said county the — day of — in the — year of the reign of —

Who on his oath saith that he was born at — [and so trace out the history of his life, so far as to ascertain his legal place of settlement.

A. O.
his † mark.

Taken and signed the day and year above written before me the abovesaid

J. P.

Warrant to the constable for whipping a vagrant.

Berks. { To the constable of —.

FORASMUCH as A. O. a rogue and vagabond, was this day found wandring and begging in the parish of — in the said county, not having obtained any legal settlement there, and was

was thereupon apprehended, and is now brought before me —, one of the justices of our lord the king assigned to keep the peace within the said county, that he may be punished and dealt withal according to law: These are therefore to command you to strip, or cause to be stripped, the said A. O. naked from the middle upwards, and to whip him, or cause him to be publicly whipped, at the common whipping-post in your said parish; and afterwards to remove and convey the said A. O. according to the directions of the pass herewith to be delivered to you. Given under my hand and seal at — in the said county the — day of — in the — year —.

Commitment of a vagrant to the house of correction.

Berks. { To the constable of — in the said county, and to the keeper of the house of correction at — in the said county.

FORASMUCH as A. O. a rogue and vagabond, was this day found wandering and begging in the parish of — in the said county, not having obtained any legal settlement there, and was therefore apprehended, and is now brought before me —, one of the justices of our lord the king assigned to keep the peace within the said county, that he may be punished and dealt withal according to law: These are therefore to command you the said constable to carry the said A. O. to the said house of correction, and deliver him to the said keeper thereof, together with this warrant: And I do hereby command you the said keeper to receive the said A. O. into your custody in the said house of correction, and him there safely to keep until the next general quarter sessions of the peace to be holden for the said county; and

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and have you him then there together with this precept. Given under my hand and seal at — in the said county, &c.

Vagrant pass within the same jurisdiction.

Berks, ff.

To the constable of — in the said county, to receive and convey; and to the churchwardens, chapelwardens or overseers of the poor of the parish of — in the said county, or either of them, to receive and obey.

WHEREAS A. O. was apprehended within the constablewick of — aforesaid in the county aforesaid, as a rogue and vagabond, viz. — And upon examination of the said A. O. taken before me J. P. esq; one of his majesty's justices of the peace in and for the said county (which examination is hereunto annexed) it doth appear, that — These are therefore to require you the said constable to convey the said A. O. in the next direct way to the said parish of — within the said county, and there to deliver him to some churchwarden, chapelwarden, or overseer of the poor of the same parish of —, to be there provided for according to law. And you the said churchwardens, chapelwardens and overseers of the poor, are hereby required to receive the said person, and provide for him as aforesaid. Given under my hand and seal the — day of — in the year of our lord —.

Vagrant

Vagrant pass from county to county.

Berks. { To the constable of ——— in the
said county, and also to all constables and other officers whom it may concern, to receive and convey: And to the churchwardens, chapelwardens or overseers of the poor of the parish of ——— in the county of ———, or either of them, to receive and obey.

WHEREAS A. O. was apprehended in the township of ——— aforesaid in the county of ——— aforesaid, as a rogue and vagabond, that is to say ———: And upon examination of the said A. O. taken before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon oath (which examination is herunto annexed) it doth appear, that ———: These are therefore to require you the said constable to convey the said A. O. to the town of ——— in the county of ———, that being the first town in the next precinct through which he ought to pass in the direct way to the said parish of ——— in the county of ———, to which he is to be sent, and to deliver him to the constable or other officer of such first town in such next precinct, together with this pass and the duplicate of the examination of the said A. O. taking his receipt for the same. And the said A. O. is to be thence conveyed on in like manner to the said parish of ——— in the county of ———, there to be delivered to some of the churchwardens or overseers of the poor of the same parish of ———, to be there provided for according to law. And you the said churchwardens, chapelwardens, and overseers of the poor, are hereby required to receive the said person, and provide for him as aforesaid. Given, &c.

The

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The certificate, according to the directions of the statute, shall be in the form or to the effect following:

WHEREAS *by a pass* (reciting the substance of the said pass) *I (or we) do hereby order and direct the said person (or persons) to be conveyed on foot (or in a cart, or by horse, &c.) to the said town (or parish) of _____ in (or other place, describing it) in the way to such parish, (town, or place, as the case shall be) in _____ days time; for which the said constable, &c. is to be allowed the sum of _____ and no more. Given under my hand (or our hands) &c. _____*

Vagrant pass to Scotland.

Berks. { To the constable of _____ in the said county; and also to all constables and other officers whom it may concern, to receive and convey; and to all constables and other officers within that part of Great Britain called Scotland, whom it may concern, to receive and obey.

WHEREAS A. O. was apprehended in the town of _____ aforesaid in the county aforesaid, as a rogue and vagabond, viz. _____ And upon examination of the said A. O. taken before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon oath (which examination is hereunto annexed) it doth appear, that his lawful place of settlement is in that part of Great Britain called Scotland: These are therefore to require you the said constable of _____ aforesaid in the said county, to convey the said A. O. to the town of _____ in the county of _____, that being

being the first town in the next precinct through which he ought to pass in the direct way to that part of Great Britain called Scotland aforesaid, to which he is to be sent, and to deliver him to the constable or other officer of such first town in such next precinct, together with this pass and the duplicate of the examination of the said A. O. taking his receipt for the same. And the said A. O. is to be thence conveyed on in like manner into the next adjoining shire or place in that part of Great Britain called Scotland aforesaid, and is there to be delivered to some constable or other officer of the next parish, district or place, within such next adjoining shire, or place aforesaid, taking his receipt for the same. And such next officer in that part of Great Britain called Scotland aforesaid, is hereby required to receive the said A. O. and give such receipt as aforesaid, and to dispose of him the said A. O. according to law. Given under my hand and seal this — day of — in the year of our lord —.

Vagrant pass to Ireland.

Berks. { To the constable of — in the said county ; and also to all constables and other officers whom it may concern, to receive and convey ; and to all other officers of the peace whom it may concern, to receive and obey.

WHEREAS A. O. was apprehended in the town of — in the said county as a rogue and vagabond, viz. — And upon examination of the said A. O. taken before me J. P. esq; one of his majesty's justices of the peace in and for the said county, upon oath, (which examination is bereunto annexed) it doth appear, that the lawful settlement of him the said A. O. is in the kingdom of Ireland : These are therefore to require you the said constable

Vagrants.

constable of ——— to convey the said A. O. to the town of ——— in the county of ———, that being the first town in the next precinct through which he ought to pass in the direct way to the said kingdom of Ireland, to which he is to be sent, and to deliver him to the constable or other officer of such first town in such next precinct, together with this pass and the duplicate of the examination of the said A. O. taking his receipt for the same. And the said A. O. is to be thence conveyed on in like manner until he shall arrive in the county of ———. And the constable, or other officer to whom he shall be delivered in the said county of ———, is hereby required to apply to some justice of the peace in and for the said county of ———, for a warrant to the master of any ship or vessel bound for the said kingdom of Ireland, that shall lie in the said county of ———, to take on board the said ship or vessel him the said A. O. and convey him to such place in the said kingdom of Ireland; as such ship or vessel shall be bound unto. Given under my hand and seal, &c.

Warrant to a master of a ship to export a vagrant.

J. P. esq; one of the justices of our lord the king assigned to keep the peace within the said county, to A. M. master of the ship called the ——— of ———, now lying or being at ———, and bound for ——— in the kingdom of Ireland, sendeth greeting :

Berks.

THESE are, in the name of our said lord the king, to require you to take on board the said ship A. O. and B. O. vagrants, both of them being natives of the kingdom of Ireland aforesaid, and having no settlement in England, and them to convey

Vagrants.

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convey to _____ aforesaid in the kingdom of Ireland, or to such other place in that kingdom as you shall arrive at; and for the charge thereof you shall take, and A. C. constable of _____, at the time he shall serve you with this warrant, shall pay, and is hereby required to pay unto you the sum _____ in the whole, that is, at the rate of _____ head for each of the said vagrants, so to be delivered unto you, the same being the rate last appointed by the justices of our said lord the king, assigned to keep the peace within the said county at their general quarter-sessions of the peace held in and for the said county. And you are on the back of this warrant to sign a receipt for the money so paid, and also for the said vagrants so delivered unto you. Given under my hand and seal, &c.

Warrant to secure a lunatick.

Berks. { To the constables, churchwardens and
overseers of the poor of _____.

WHEREAS it hath been proved before us _____ two of the justices of our lord the king assigned to keep the peace within the said county upon the oaths of A. W. and B. W. both of the parish of _____ in the county aforesaid, gentlemen, that A. L. late of _____, frequently goeth at large in the said parish of _____. And that he the said A. L. is by lunacy so far disordered in his senses, that he is dangerous to be permitted to go abroad; and that his legal settlement is in the parish of _____. These are therefore to authorize and require you and every of you to cause the said A. L. to be apprehended and kept safely locked up in the house of A. K. at _____ in the said county, the said A. K. being willing to keep and entertain him the said A. L. for a reasonable allowance in that behalf, and the said house being a secure place:

M

And

Vagrants.

And the said A. L. is to be kept so locked up only so long as such lunacy or disorder shall continue, and no longer. Given under our hands and seals at ——— in the said county, the ——— day of ———.

Order to charge the lunatick's estate, with his keeping, maintenance and cure.

Berks. { To the churchwardens and overseers of the poor of the parish of ——— in the said county.

WHEREAS A. L. late of ——— in the said county, being a person lunatick, and so far disordered in his senses, that he was and is dangerous to be permitted to go abroad, hath, by warrant under the hands and seals of us ———, two of his majesty's justices of the peace for the said county, been apprehended and safely locked up in the house of A. K. at ——— in the said county, the said house being a secure place for that purpose: And whereas it appears to us, on the oaths of C. W. churchwarden, and O. P. overseer of the poor of the parish of ———, that they the said churchwarden and overseer have reasonably expended the sum of ——— in removing the said A. L. to the said house of the said A. K. and in keeping, maintaining and curing him there: These are to authorize and command you to seize and sell so much of the goods and chattles, and to receive so much of the annual rents of the lands and tenements of him the said A. L. within your said parish, as shall be necessary to pay the same: And for what shall be so seized, sold or received by you, you are to account at the next quarter-sessions of the peace to be holden for the said county. Given under our hands and seals at ——— in the said county the ——— day of ———.

Record

Record to avoid the settlement of a
bastard child born in vagrancy.

Berks. **B**E it remembered, that on the _____
day of _____ in the _____ year of
the reign of our sovereign lord George the second of
Great Britain, France and Ireland king, defender
of the faith, &c. A. B. and C. D. overseers of
the poor of the parish of _____ in the said county,
at _____ in the said county, do bring unto me
_____, one of the justices of our said lord the king
assigned to keep the peace within the said county,
and also to hear and determine divers felonies, tres-
passes and other misdemeanours, in the said county
committed, the body of one A. P. and do complain
unto me the justice aforesaid, and give me to be in-
formed that on the _____ day _____ in the year
aforesaid, at _____ in the parish aforesaid in the
county aforesaid, she, the said A. P. was wandering
and begging; and that she the said A. P. then and
there, to wit, on the said _____ day of _____
at _____ aforesaid, in the parish and county
aforesaid, so wandering and begging, was delivered
of a male child; and that thereby she the said
A. P. hath become chargeable, and is now charge-
able to the said parish of _____. And that she
the said A. P. had not then, nor yet hath any law-
ful settlement in the said parish of _____. And
thereupon they the said overseers of the poor of the
parish aforesaid, do pray of me the justice aforesaid,
that for themselves, and for the other inhabitants of
the parish aforesaid, a due remedy may be provided,
and that justice may be done in that behalf, accord-
ing to the form of the statute in that case made.
Which complaint, information and prayer, by me the
justice aforesaid being heard, I the said J. P. at
_____ aforesaid in the county aforesaid, on the
said _____ day of _____ in the year aforesaid,
M 2 said,

Unlawful assembly, &c.

said, upon the examination of the said A. P. upon oath, by me unto her upon the holy gospel administered, and upon other lawful evidence and testimony before me had and made, do find the said complaint and information to be true. And thereupon it is considered by me the justice aforesaid, that she the said A. P. be committed, and is by me committed to the house of correction at ——— in the county aforesaid, until the next quarter-sessions of the peace to be holden within and for the said county. In testimony whereof I the said J. P. the justice aforesaid, at ——— aforesaid in the county aforesaid, the ——— day of ——— aforesaid, in the year aforesaid, unto this record do set my seal.

Unlawful assembly.

What is an unlawful assembly, riot or rout.

WHEN three persons or more shall assemble themselves together with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprize of a private nature, with force or violence, against the peace or to the manifest terror of the people, whether the act intended were of itself lawful or unlawful; if they only meet to such purpose or intent; altho' they shall after depart of their own accord without doing any thing, this is an *unlawful assembly*.

If after their first meeting, they shall move forward towards the execution of any such acts, whether they put their intended purpose in execution or not; this according to the general opinion is a *rout*:

And

Unlawful assembly, &c.

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And if they execute such a thing in deed, then it is a riot. 1 *Haw.* 155. *Dalt. c.* 136.

Assemble themselves together.] It seems agreed, that if a number of persons being met together at a fair or market or church ale, or on any other lawful and innocent occasion, happen on a sudden quarrel to fall together by the ears, they are not guilty of a riot, but of a sudden affray only, of which none are guilty but those who actually engage in it; because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly, without any previous intention concerning it: Yet it is said, that if persons innocently assembled together do afterwards, upon a dispute happening to arise amongst them, form themselves into parties, with promises of mutual assistance, and then make an affray, they are guilty of a riot; because upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from the time of such confederacy, as if their first coming together had been on such a design. 1 *Haw.* 156.

How the same may be restrained by a private person.

By the common law, any private person may lawfully endeavour to suppress a riot by staying those whom he shall see engaged therein from executing their purpose, and also by stopping others whom he shall see coming to join them. 1 *Haw.* 159.

How by a constable or other peace officer.

By the common law, the sheriff, constable, and other peace officers, may and ought to do all in their power towards the suppressing a riot, and may command all other persons to assist therein. 1 *Haw.* 159.

How by one justice.

By the 34 *Ed.* 3. c. 1. The justices of the peace shall have power to restrain rioters, and to arrest and chastise them according to their offence; and cause them to be imprisoned and duly punished according to the law and custom of the realm, and according to that which to them shall seem best to do, by their discretions and good advisement.

It hath been resolved, that if a justice find persons riotously assembled, he alone, without staying for his companions, hath not only power to arrest the offenders, and bind them to their good behaviour, or imprison them if they do not offer good bail; but that he may also authorize others to arrest them by a bare verbal command, without other warrant; and that by force thereof, the persons so commanded may pursue and arrest the offenders in his absence as well as presence. Also it is said, that after a riot is over, any one justice may send his warrant to arrest any person who was concerned in it, and also that he may send him to gaol till he shall find sureties for his good behavior. 1 *Haw.* 160.

Warrant.

Warrant.

IF a justice see a felony or other breach of the peace committed in his presence, he may in his own person apprehend the felon; and so he may by word command any person to apprehend him, and such command is a good warrant without writing: But if the same be done in his absence, then he must issue his warrant in writing: 2 H. H. 86.

For what causes it may be granted.

There seems to be no doubt but that a warrant may be lawfully granted by any justice for treason, felony or *præmunire*, or any other offence against the peace: Also it seems clear, that wherever a statute gives to any one justice a jurisdiction over any offence, or a power to require any person to do a certain thing ordained by such a statute, it gives an implied power to every such justice to make out a warrant to bring before him any person accused of such offence, or compellable to do the thing ordained by such statute; for it cannot but be intended, that a statute giving a person jurisdiction over an offence, doth mean also to give him the power incident to all courts of compelling the party to come before him. 2 Haw. 84.

What is to be done previous to the granting it.

It is convenient, tho' not always necessary, that the party who demands the warrant, be first examined on oath touching the whole matter,

Unlawful assembly, &c.

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Warrant.

whereupon the warrant is demanded, and that examination put into writing. 1 *H. H.* 582.
2 *H. H.* 111.

Or at least it is safe to bind him over to give evidence, lest afterwards when the offender shall be apprehended, or shall surrender himself, the party that procured the warrant be gone. *Dalt.* c. 169.

How far it is grantable on suspicion.

Lord *Hale* proves at large, contrary to the opinion of lord *Coke*, (4 *Inst.* 177) that a justice hath power to issue a warrant to apprehend a person suspected of felony before he is indicted; and that, tho' the original suspicion be not in himself, but in the party that prays his warrant. 2 *H. H.* 107, 110.

For the justices are judges of the reasonableness of the suspicion, and when they have examined the party accusing, touching the reasons of his suspicion, if they find the causes of suspicion to be reasonable, it is now become the justices suspicion as well as theirs. 2 *H. H.* 80.

And in another place, speaking of this opinion of lord *Coke*, he delivers himself thus: I think, says he, the law is not so, and the constant practice in all cases hath obtained against it; and it would be pernicious to the kingdom if it should be as lord *Coke* delivers it; for malefactors would escape unexamined and undiscovered; for a man may have a probable and strong presumption of the guilt of a person, whom yet he cannot positively swear to be guilty. 1 *H. H.* 579.

Mr. *Hawkins* likewise seems to be of the same opinion against lord *Coke*: It seems probable, he says, that the practice of justices of the peace in relation to this matter, is now become a law, and that a justice may justify the granting of a warrant for the arrest

arrest of any person upon strong grounds of suspicion, for a felony, or other misdemeanour, before any indictment hath been found against him; yet inasmuch as justices claim this power, rather by connivance than any express warrant of law; and since the undue execution of it may prove so highly prejudicial to the reputation as well as the liberty of the party, a justice cannot well be too tender in his proceedings of this kind, and seems to be punishable not only at the suit of the king, but also of the party grieved, if he grant any such warrant groundlessly and maliciously, without such a probable cause as might induce a candid and impartial man to suspect the party to be guilty. *2 Harw. 85.*

But a general warrant upon complaint of a robbery to apprehend *all persons suspected*, and to bring them before a justice, was ruled void, and false imprisonment lies against him that issues such a warrant. *1 H. H. 580. 2 H. H. 112.*

Touching a search warrant.

Mr. *Hawkins* says, I do not find any good authority, that a justice can justify sending a general warrant, to search all suspected houses in general for stolen goods; because such warrant seems to be illegal in the very face of it; for it would be extremely hard to leave it to the discretion of a common officer, to arrest what persons, and search what houses he thinks fit; and if a justice cannot legally grant a blank warrant for the arrest of a single person, leaving it to the party to fill it up, surely he cannot grant such a general warrant which might have the effect of a hundred blank warrants. *2 Harw. 82, 84.*

But in case of a complaint and oath made of goods stolen, and that the party suspects the goods are in such a house, and shews the cause of his

Warrant.

suspicion; the justice may grant a warrant to search in those suspected places mentioned in his warrant, and to attach the goods and the party in whose custody they are found, and bring them before him, or some other justice, to give an account how he came by them, and further to abide such order as to law shall appertain. 2 H. H. 113, 150.

Such warrant ought to be directed to the constable or other publick officer, and not to any private person; tho' it is fit the party complaining should be present and assisting, because he knows his goods. 2 H. H. 150.

With respect to the execution of it.

Whether the stolen goods are in the suspected house or not, the officer and his assistants in the day time may enter, the doors being open, to make search, and it is justifiable by this warrant. 2 H. H. 151.

If the door be shut, and upon demand it be refused to be opened by them within, if the stolen goods be in the house, the officer may break open the door. 2 H. H. 151.

If the goods be not in the house, yet it seems the officer is excused that breaks open the door to search, because he searched by warrant, and could not know whether the goods were there, till search made; but it seems the party that made the suggestion is punishable in such case; for as to him the breaking of the door is *in eventu* lawful or unlawful, to wit, lawful, if the goods are there, unlawful if not there. 2 H. H. 151.

On the *return* of the warrant executed, the justice hath these things to do; as touching the goods brought before him, if it appear they were not stolen, they are to be restored to the possessor; if it appear they were stolen, they are not to be delivered to the proprietor, but deposited in the

the hand of the sheriff or constable, to the end the party robbed may proceed by indicting and convicting the offender, to have restitution. 2 H. H. 151.

As touching the party that had the custody of the goods; if they were not stolen, then he is to be discharged; if stolen, but not by him, but by another that sold or delivered them to him, if it appears that he was ignorant that they were stolen, he may be discharged as an offender, and bound over to give evidence as a witness against him that sold them; if it appears he was knowing they were stolen, he must be committed or bound over to answer the felony. 2 H. H. 152.

Windows.

First meeting of the commissioners, for the issuing precepts to return assessors.

COMMISSIONERS of the land tax shall be commissioners for the duties on houses and windows. 20 G. 2. c. 3. s. 6. Commissioners of these duties.

But no commissioner of the land tax shall act as commissioner of these duties, unless duly qualified; (that is, unless he be taxed at 100 l. a year in the county or division, except certain counties in *Wales* as by the land tax acts) on pain of 20 l. to be levied as other penalties by this act. 21 G. 2. c. 10. s. 3.

But they shall not be obliged to take the oaths and subscribe the declaration, and receive the sacrament as directed by the 25 C. 2. c. 2. as other persons qualifying for offices; but only to take the oaths of allegiance, supremacy and abjuration, as by the land tax acts. 20 G. 2. c. 3. s. 27.

Which

Windows.

Time and
place of
meeting.

Which said commissioners shall meet yearly at the most usual place, at such time as shall be appointed for the first general meeting of the commissioners of the land tax, or on such other day as they shall think proper, before *April 30*, yearly. 20 Geo. 2. c. 3. s. 5.

Subdividing.

And at such first meeting they may agree to subdivide themselves and the other commissioners not then present, in such manner as to them shall seem meet. *Same*, s. 6.

Precept to
return assessors.

Also at such first meeting, they or the major part of them then present, shall direct their several or joint precepts to such inhabitants, and such number of them as they shall think most convenient, to be presentors and assessors, requiring them to appear before the said commissioners at such time and place as they shall appoint, not exceeding ten days. 20 G. 2. c. 3. s. 6.

Assessor to
be sworn.

And every assessor, before he acts, shall take the oaths required by the 1 W. c. 18. before three commissioners. 20 G. 2. c. 3. s. 6.

Assessors refusing to take the oaths, or their offices, shall forfeit 5*l*. 20 G. 2. c. 42. s. 2. by distress and sale as by the 20 G. 2. c. 3.

*Second meeting; charge to the assessors,
with the manner of laying the assessment.*

Charge to
the assessors.

The commissioners shall openly read, or cause to be read to the assessors, the several rates and duties, and openly declare the effect of their charge unto them, and how they ought to make their assessment. 20 G. 2. c. 3. s. 6.

Duty on
houses.

That is to say, for every dwelling-house inhabited, shall be paid yearly 2*s*. 20 G. 2. c. 3. s. 2.

Duty on
Windows.

And for every window or light in every dwelling-house containing 10, 11, 12, 13 or 14 windows or lights, shall be paid moreover the yearly sum

Windows.

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sum of 6*d.* And for every window or light in every dwelling-house as aforesaid, containing 15, 16, 17, 18 or 19 windows, the yearly sum of 9*d.* each. And for every window or light in every dwelling-house as aforesaid, containing 20 windows or lights, and upwards, the yearly sum of 1*s.* each. 20 G. 2. c. 3. *f.* 3.

And every kitchen, scullery, buttery, pantry, larder, wash-house, laundry, bake-house, brew-house and lodging-room, belonging to or occupied with any dwelling-house, whether joined to it or not, shall be deemed part thereof, and the windows therein charged accordingly. 21 Geo. 2. c. 10. *f.* 1.

Also sky-lights and windows, or lights in stair-cases, garrets, cellars, passages, and in all other parts of dwelling houses, to what use soever applied, shall be charged. *f.* 2.

And no windows or lights shall be deemed to be stopped up, unless it be done effectually with stone or brick, or plaister upon lath, or upon any other material commonly used to plaister upon, or with the same kind of materials whereof the outside of the house doth chiefly consist. 21 G. 2. c. 10. *f.* 11.

But this not to extend to windows stopped up with any materials before the year 1746. *f.* 12.

And if any occupier shall open any windows after the assessments are settled, and warrants for collecting signed, without notice in writing to the surveyor, he shall forfeit 20*s.* 20 G. 2. c. 3. *f.* 39. by distress and sale, *f.* 28. half of which fine shall go to the informer. 21 G. 2. c. 10. *f.* 15.

And the rates shall be charged only upon the inhabitants or occupiers, and not on the landlord who lett or demised the same. 20 Geo. 2. c. 3. *f.* 5.

Such

Cottages.

Such dwelling-houses only, where the occupier by reason of poverty only, is exempted from the usual taxes to church and poor, shall be exempted from the duties; and that only in such cases where the dwelling houses so occupied, are cottages, not containing above nine windows in the whole. 20 G. 2. c. 3. s. 29.

Obstructing the assessor.

And if any person shall wilfully obstruct or molest any assessor in the execution of his duty, he shall forfeit 5 l. to be levied as the rates and duties. 21 G. 2. c. 10. s. 14.

Assessors to assess themselves.

And the assessors shall assess themselves, and the commissioners, as other persons, are assessed. 21 G. 2. c. 10. s. 16.

Days for bringing in the assessment.

And the commissioners shall then and there prefix a day for the persons to appear before them, and bring in their assessment in writing under their hands; setting forth therein the names and surnames of the several occupiers or inhabitants of each respective dwelling-house chargeable, the number of windows or lights, and the several sums they ought to pay. 20 G. 2. c. 3. s. 6.

Which day shall be on or before *June 4*, yearly. s. 7.

Third meeting; signing the assessment, with warrant to collect.

The assessors appearing at the day appointed, shall deliver in their assessments, to be verified upon their oaths, and not otherwise. 20 G. 2. c. 3. s. 6.

And shall then return the names of two or more able persons to be collectors, for whom the parish or place shall be answerable. 20 G. 2. c. 3. s. 6.

At which time also three or more of the commissioners shall set their hands to the assessments, testifying

testifying their allowance thereof. 20 G. 2. c. 3.
f. 9.

And they shall also appoint two of the persons named in the assessment, or any two others whom they shall think able and responsible, to be collectors. *Same.*

Collectors refusing to take their offices shall forfeit 5*l.* 20 G. 2. c. 42. f. 2. by distress and sale, as by the 20 G. 2. c. 3.

At this third meeting likewise comes in the business of the surveyors, who shall be appointed by the king, or three commissioners of the treasury; who shall appoint them such salaries as they shall think reasonable. 20 Geo 2. c. 3. f. 30. 42, 43.

And they shall have power to examine the assessments, before they are signed and allowed by the commissioners; and at seasonable times with a constable to view and examine whether there be any more windows than are assessed, and to pass for that purpose through any house, to go into any court, yard or backside thereunto belonging, and externally to view the windows which cannot be conveniently seen or numbered without going through such house; and this they may do twice a year. *Same, f. 30.*

And the constables and other his majesty's officers shall be assisting; and shall also obey and execute the warrants of the commissioners to them directed. *Same, f. 22.*

And if any person shall wilfully obstruct or molest any surveyor in the execution of his duty, he shall forfeit 5*l.* to be levied as the rates and duties. 21 G. 2. c. 10. f. 14.

Fourth meeting; the appeal.

Every collector shall, within ten days after notice from the commissioners of the time and place
of

Windows.

of appeal, cause publick Notice to be given in every parish church or chapel within his district, immediately after divine service on the lord's day, (if any such divine service shall be performed there within that time) of the time and place so appointed by the commissioners for hearing and determining appeals: And shall also on the same day cause the like notices to be fixed in writing on the door of such church or chapel. 20 Geo. 2. c. 3. s. 12.

And every person intending to appeal shall give at least ten days notice thereof in writing to the surveyor, or to one or more of the assessors. 21 G. 2. c. 10. s. 8.

At the appeal the commissioners shall examine the parties complaining, upon oath, concerning their number of windows or lights. 20 G. 2. c. 3. s. 12.

Appeals determined shall be final: Except that if the surveyor or appellant shall then declare himself dissatisfied with the determination of the commissioners, they shall, at such person's request, state specially and sign the case upon which the question arose, together with their determination thereupon, and cause the same to be delivered to the party, to be by him transmitted to one of the judges, who shall with all convenient speed return an answer with his opinion subscribed; according to which the assessment shall be altered or confirmed; provided that the determination of the commissioners shall stand, with respect to the payments which shall be due precedent to the opinion upon the case certified by the judge. 21 G. 2. c. 10. s. 9, 10.

Collector to
make de-
mand,

The collectors shall make demand of the parties chargeable, or at the places of their last abode, within ten days after the duties shall become due and payable. 20 G. 2. c. 3. s. 7.

And

And in case of non-payment to distrain the goods, and keep them four days; and if not paid then, to appraise and sell them, the overplus to be returned to the owner. And where no sufficient distress, three commissioners by their warrant may commit the party who shall neglect to pay within 20 days after demand, to the common gaol. 20 G. 2. c. 3. s. 11.

The collectors shall pay in the money received within ten days after receipt thereof, to the receiver general or his deputy, at such place as the commissioners shall appoint. 20 G. 2. c. 3. s. 7.

Collector paying to the receiver.

Every collector shall have 3 d. in the pound for what money he shall pay to the receiver general. 20 G. 2. c. 3. s. 7.

Collector to have 3 d. in the pound.

General penalty on officers not doing their duty.

If any surveyor shall knowingly, thro' favour or malice, under-rate or over-rate, or omit to charge any person liable, or shall be guilty of any corrupt or illegal practice in the execution of his office, he shall forfeit 100 l. and his office. 20 G. 2. c. 3. s. 10.

Assessor guilty of concealment, or favour in assessing, shall forfeit not exceeding 5 l. nor under 40 s. Same, s. 6.

And generally; If any assessor, collector or other person, appointed by the commissioners, shall wilfully neglect or refuse to perform his duty, three commissioners may fine him not exceeding 20 l. nor under 5 l. to be levied by distress, and charged amongst the rates to the receiver general. Same, s. 21.

And the penalties and forfeitures, for which no other way of levying is prescribed, shall be levied by warrant of three commissioners by distress, rendering the overplus, after deducting reasonable charges for distraining. Same, s. 28.

General method of levying the penalties.

Indemnity

Indemnity of officers in doing their duty.

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ERRATUM.

Dele the words "Of the poor rate and other helps towards their relief, Page 53.

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sals may be had.

TO THE PUBLIC.

IT is not our intention here to enumerate the errors of
those geographical writers that have preceded us; we
only mention them as a principal reason for undertaking
this Work, and for pointing out some particulars, in which
it has the advantage over all others of the same kind.

1. It is more complete than any Performance of this
kind, that ever yet appeared in the English language, con-
taining a great number of Places not to be found in any
other Geographical work, and a large variety of particu-
lars relating to the trade, commerce, revenues, constitu-
tions,

tions, forces, &c. of the most remarkable kingdoms, and states, omitted by other writers.

2. The articles are extracted from the greatest authorities; every authentic modern book of voyages and travels has been carefully consulted; particularly a Geographical Work in the German language written by Mr. Busching, professor in the university of Gottingen, the whole Substance of which we have translated into this Dictionary, as it is a Work greatly and deservedly esteemed in foreign countries.

3. The Maps are more accurately constructed than any that have yet appeared, care having been taken to lay down the several particulars, according to the best and latest observations. In this particular we have had recourse to the Atlas just published by le Sr. Robert, Geographer to the king of France, which being the best extant, we have copied exactly, except the addition of some improvements resulting from observations since made in different parts of the world.

4. The several articles are ranged in alphabetical order; so that every particular is found without the least difficulty, and the study of Geography rendered very easy, familiar, and entertaining.

5. The Introductory Dissertation contains every thing necessary for understanding Geography as a Science; and the whole is delivered in so plain and intelligible a manner, that the meanest capacity may easily understand it, and, with a very little trouble, become a master of this useful branch of Literature.

In short, we have sincerely laboured to render this Work as complete as possible, and to remove every difficulty attending the study of so valuable a Science: How far we have succeeded must be left to the Public; to that tribunal we submit the value of our work, expecting encouragement, only in proportion to the merits of our labours.

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Gentlemen may begin taking in this Work at any Time, and go on with one Number a Week, or more, as they think proper.

ERRATA.

IN title ~~Windows~~, Page 252. add, For every dwelling-house inhabited, shall be paid yearly 1 s. over and above the yearly Sum of 2 s. already charged upon every such dwelling-house. 30 Geo. 2. c. 22. And for every window or light in every dwelling house inhabited, which shall contain 15 windows or lights, or upwards, the yearly Sum of 6 d. for each window or light, in such house, over and above the several and respective duties chargeable thereupon by virtue of former acts of parliament made in that behalf. *Ibid.*

The said several duties shall be raised, levied, collected and paid, as the act of 20 Geo. 2. c. 3, 42. & 21 Geo. 2. c. 10. prescribe with respect to the duties thereby granted. *Ibid.*

In title ~~Apprentices~~, Page 5. Par. 5. for double read single.

Page 45. title ~~Constables~~, for 27 Geo. 2. c. 25. read 29 Geo. 2. c. 25. and see 31 Geo. 2. c. 17. to explain, amend, and render more effectual the above act.

Page 51. same title, constables are to provide waggons, &c. for the army, 30 Geo. 2. c. 6. *sect.* 41. for the marines, c. 11. *sect.* 25. for the militia, c. 25. *sect.* 50. Taking money to excuse from quartering soldiers, the penalty, 30 Geo. 2. c. 6. *sect.* 66. or marines, c. 11. *sect.* 39.

E R R A T A.

In title **Booz**, (settlement by apprenticeship) at the bottom of *page 88.* add,

No person who shall have been bound an apprentice, or shall hereafter be bound, by any deed, writing, or contract, *not indented*, being first legally stamp'd, shall be removed from the town, &c. where he or she shall have been so bound an apprentice, and resident 40 days, by virtue of any order of removal, on account of such deed, &c. not being indented only. 30 Geo. 2. c. 11. *fol.* 597.

In title **Servants**, *Page 169.* The above act of 20 Geo. 2. c. 19. is extended to servants employed in husbandry, though hired for a less time than a year. 31 Geo. 2. c. 11. *fol.* 598.

In title **Surveyors**, &c. *Page 196.* all the clauses of 28 Geo. 2. c. 17. here mentioned stand repealed by 30 Geo. 2. c. 28. *sect.* 10. which see, it being an act to render more effectual the several laws now in being for the amendment and preservation of the public highways and turnpike roads of this kingdom.

In title **Surveyors**, &c. *page 200.* add, Collector obliged to weigh only loaded carriages. 30 Geo. 2. c. 28. *sect.* 14.

